

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 4/21/2017 8:28:00 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]
CC: Zenick, Elliott [Zenick.Elliott@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]; Page, Steve [Page.Steve@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Subject: **Attorney Client / Ex. 5**

Thanks.

You, too!

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Schwab, Justin
Sent: Friday, April 21, 2017 4:28 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: CPP proposed repeal

I will handle hard copies for me and Ryan. Thanks everyone, have a good weekend!!!

From: Schmidt, Lorie
Sent: Friday, April 21, 2017 4:27 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

Justin – would you like me to get hard copy to you or Ryan?

Lorie

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 4/25/2017 11:55:50 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
CC: Graham, Amy [graham.amy@epa.gov]
Subject: FW: 100 days Talkers
Attachments: 100 Days Template DRAFT.DOCX



100 Days
template DRAF...

Deliberative Process / Ex. 5

From: Graham, Amy
Sent: Tuesday, April 25, 2017 6:56 PM
To: Freire, JP <Freire.JP@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: 100 days Talkers

Deliberative Process / Ex. 5

From: Graham, Amy
Sent: Tuesday, April 25, 2017 6:13 PM
To: Freire, JP <Freire.JP@epa.gov>
Cc: Liz Bowman (Bowman.Liz@epa.gov) <Bowman.Liz@epa.gov>
Subject: RE: 100 days Talkers

Liz and I are working on updating the document. Here are the economic stats I pulled from the attached document. Please double check my math.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-----Original Message-----

From: Freire, JP

Sent: Tuesday, April 25, 2017 5:58 PM

To: Graham, Amy <graham.amy@epa.gov>

Subject: 100 days Talkers

Need for fox

J.P. Freire

Environmental Protection Agency

Associate Administrator for Public Affairs

Mobile:

Personal Phone / Ex. 6

Message

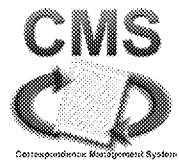
From: Hope, Brian [Hope.Brian@epa.gov]
on behalf of EPAExecSec [EPAExecSec@epa.gov]
Sent: 4/4/2017 8:23:38 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Graham, Amy [graham.amy@epa.gov]
CC: Gaines, Cynthia [Gaines.Cynthia@epa.gov]; Hautamaki, Jared [Hautamaki.Jared@epa.gov]; Threet, Derek [Threet.Derek@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Fonseca, Silvina [Fonseca.Silvina@epa.gov]; Burden, Susan [Burden.Susan@epa.gov]
Subject: Daily Reading File - April 4, 2017
Attachments: Daily Reading File.4.4.17.pdf



Correspondence Management System

Control Number: AX-17-000-7063

Printing Date: April 03, 2017 04:51:40



Citizen Information

Citizen/Originator: Jasinski, Paula

Organization: Citizens Advisory Committee
Address: 612 Hull Street, Richmond, VA 23224

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-17-000-7063 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 18, 2017 **# of Extensions:** 0
Letter Date: Mar 28, 2017 **Received Date:** Apr 3, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: RA-R3-Regional Administrator - Region 3 **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Urge agency to advocate for full funding for the Chesapeake Bay Program
Instructions: RA-R3-Prepare draft response for signature by the Regional Administrator for Region 3
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCFO - OCFO -- Immediate Office
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R3	Apr 3, 2017	Apr 18, 2017	N/A
Instruction: RA-R3-Prepare draft response for signature by the Regional Administrator for Region 3					

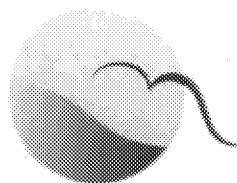
Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



RECEIVED

2017 APR -3 PM 1:16

OFFICE OF THE
EXECUTIVE SECRETARIAT

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Nikki Tinsley
Maryland

Vicente Ukpalo
Maryland

Neil Witkie
Maryland

Citizens Advisory Committee

TO THE CHESAPEAKE EXECUTIVE COUNCIL

March 28, 2017

Chesapeake Executive Council:

As your appointed volunteers representing perspectives from citizens, we strongly urge you to advocate for full funding of \$73 million for the EPA Chesapeake Bay Program (Bay Program). A healthy Chesapeake Bay is an economic engine for our region. The seafood industry alone provides more than 41,000 jobs and \$2 billion in sales.¹ Oyster and clam aquaculture is now thriving in the Bay, netting Virginia alone approximately \$50 million in 2015.² Real estate, tourism, and many other commercial sectors also rely on the health of the Rivers of the Chesapeake Bay and the Chesapeake Bay Program is the foundation for clean waterways in our region.

The President's 2018 Budget Blueprint proposal to eliminate the funding for the Bay Program and other Bay-related federal programs would severely threaten the health of local rivers and the Chesapeake Bay, state and local water protection, and the scientific integrity of the restoration effort. Two-thirds of the Bay Program funding is passed down to the States and local governments, and for on-the-ground restoration programs that include the highly effective Small Watershed and Innovative Nutrient and Sediment Reduction Grants. While the combined contributions by the States and D.C. make up the majority of the investments toward watershed recovery, the Bay Program and other federal spending are crucial components to the success of the Chesapeake Bay Partnership. Simply put, the states already invest in the Chesapeake Bay restoration effort and cannot make up the difference if the federal responsibility is not met.

The Bay Program supports local restoration work by providing essential monitoring of progress, modeling for decision making, and collaboration among the six States, D.C., local governments and stakeholders. The Bay Program provides much-needed, and otherwise not available, technical support, expert panel guidance, and collaboration to all of the partners working for healthy and resilient local rivers systems. Elimination of the Bay Program and other Bay-related federal funding sends a strong signal that the federal government will not uphold its responsibility and contribution for clean water and human health as Congress intended by the Clean Water Act. Furthermore, Section 117 of the Clean Water Act calls for the EPA Administrator to maintain an office to support the Chesapeake Bay Program. Without the Bay Program the States' ability to adapt practices for performance and cost effectiveness and reduce pollution flowing into local rivers will be critically hindered.

Jessica M. Blackburn, CAC Coordinator

612 Hull Street, Suite 101C | Richmond, VA 23224 | (804) 775-0953 | jblackburn@allianceforthebay.org



The Bay Program has led a successful Federal-State partnership that is showing progress in improved water health and living resources. In 2009 a peer reviewed economic analysis concluded that the cost to implement the clean-up plan provides over four times the economic return.³ If the clean-up plan was fully implemented, the value of our region's land and water natural benefits would be \$129.7 billion per year.⁴ If the clean-up plan is not finished it would mean a loss of value of \$5.6 billion every year.⁵ The Bay Program and other federal agencies contribute to a healthy economy relied upon by the residents and businesses in the watershed.

Administrator Pruitt expressed his support for the Chesapeake Bay Program during his Congressional confirmation hearing in January 2017, indicating the EPA and States' approach to the Bay clean-up should be "commended and celebrated". As your appointed advisors, we agree and strongly encourage you to fight to ensure the federal government upholds its role in continuing the progress and economic value of the Chesapeake Bay Watershed for future generations.

Thank you for your urgent attention to this crucial federal 2018 Fiscal Year budgeting concern. It holds great influence over the 18 million residents that rely on a clean Chesapeake Bay Watershed for health, jobs, and tourism. The Bay Program is a national model because of its ability to establish effective collaboration among the six states and D.C., at least ten federal agencies, dozens of nonprofit organizations, several leading research institutions, and the public. As the Chesapeake Bay Program goes, so goes similarly complex watershed restoration efforts around our nation.

Please let us know if we can be of assistance.

Sincerely,



Paula Jasinski
Chair, Citizens' Advisory Committee

¹ CBP Website 2011.

http://www.chesapeakebay.net/blog/post/ask_a_scientist_how_big_of_an_industry_is_the_chesapeake_bay

² VIMS 2015 Shellfish Aquaculture Situation and Outlook Report, Hudson and Murray

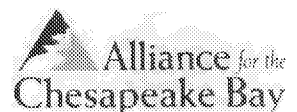
³ Spencer Phillips, Ph.D., 2009. *The Economic Benefits of Cleaning Up the Chesapeake: A Valuation of the Natural Benefits Gained by Implementing the Chesapeake Clean Water Blueprint*, report commissioned by Chesapeake Bay Foundation developed by with scientific assistance from Beth McGee, Ph.D., and peer reviewed by Dr. Gerald Kaufman of University of Delaware, Dr. Valerie Esposito of Champlain College, Dr. Tania Briceno of Earth Economics, and Mr. Dan Nees of the University of Maryland Center

⁴ Phillips, The Economic Benefits of Cleaning Up the Chesapeake

⁵ Phillips, The Economic Benefits of Cleaning Up the Chesapeake



Jessica M. Blackburn, CAC Coordinator
612 Hall Street, Suite 201C | Richmond, VA 23224 | (804) 775-0953 | jblackburn@allianceforthebay.org

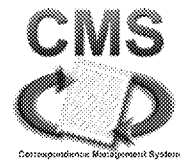




Correspondence Management System

Control Number: AX-17-000-7064

Printing Date: April 03, 2017 04:45:58



Citizen Information

Citizen/Originator: Poling, Susan A.

Organization: GAO U.S. Government Accountability Office
Address: 441 G Street, N.W., Washington, DC 20548

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7064
Status: Pending
Due Date: Apr 18, 2017
Letter Date: Mar 24, 2017
Addressee: AD-Administrator
Contact Type: LTR (Letter)
Signature: DX-Direct Reply
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Alternate Number: N/A
Closed Date: N/A
of Extensions: 0
Received Date: Apr 3, 2017
Addressee Org: EPA
Priority Code: Normal
Signature Date: N/A
Subject: DRF - Reporting of Federal Vacancies
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Jared Hautamaki - AO-IO
OARM - OARM -- Immediate Office
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OGC	Apr 3, 2017	Apr 18, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-328944

March 24, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency

Dear Administrator Pruitt:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

The Vacancies Act provides rules for the temporary filling of certain vacant positions that require presidential appointment and Senate confirmation.² Under the Act, a person may serve as an acting officer in a vacant position covered by the Act for no longer than 210 days from the date of the vacancy. The Act provides for adjustments to the 210-day time limitation when the President submits a nomination to fill the position.³

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

¹ 5 U.S.C. §§ 3345-3349d.

² The Vacancies Act applies to all presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a government corporation. 5 U.S.C. § 3349c.

³ The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Act to specific vacancies as well as some general guidance. See Memorandum for Agency Counsels, *Guidance on Application of Federal Vacancies Reform Act of 1998*, OLC Opinion, Mar. 22, 1999, available at http://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060_0.pdf (last visited March 1, 2017).

⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/federal-vacancies-act/overview>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

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2017 APR -3 PM 1:19
OFFICE OF THE
EXECUTIVE SECRETARIAT

GAO would also appreciate certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
- any changes in the status of the vacant position and the effective date of the change (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: http://www.gao.gov/pdfs/legal/fed_vac.pdf.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, on 202-512-7227, or Shirley A. Jones, Assistant General Counsel, on 202-512-8156.

Sincerely yours,



Susan A. Poling
General Counsel

cc: Kevin S. Minoli
Acting General Counsel

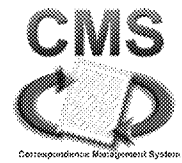
⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.



Correspondence Management System

Control Number: AX-17-000-7065

Printing Date: April 03, 2017 04:26:08



Citizen Information

Citizen/Originator: Davis, H. Scott

Organization: Capatz Operating, Inc.

Address: P.O. Drawer 10549, Midland, TX 79702

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7065

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 18, 2017

of Extensions: 0

Letter Date: Mar 23, 2017

Received Date: Apr 3, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: DRF - Information Collection Demand

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: Kristien Knapp - AO-IO

OCIR - Office of Congressional and Intergovernmental Relations

OPA - Office of Public Affairs

R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Apr 3, 2017	Apr 18, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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CAPATAZ OPERATING, INC.

P.O. Drawer 10549
Midland, Texas 79702
432-620-8820
capataz1@sbcglobal.net
03/23/2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: United States Environmental Protection Agency
Information Collection Demand

Dear Administrator Pruitt;

Attached please find a copy of Apex TITAN, Inc. invoice number 12676 dated January 20, 2017 to Capataz Operating, Inc. (Exhibit "A"). This invoice reflects charges for professional services provided to Capataz Operating pursuant to preparing and submitting certain United States Environmental Protection Agency data and forms in compliance with the United States Environmental Protection Agency demand letter (Exhibit "B") dated November 14, 2016 and transmitted via Certified Mail to this office. This request (*NOTE - "you are required to complete the Part 1"*) was received by this office on December 13, 2016. A review of Exhibit "B" will confirm that Capataz Operating Inc. was required by the United States Environmental Protection Agency to comply with their demand for information related to certain oil and gas production facilities. Capataz Operating, Inc. was not given an option to postpone our response or ignore the EPA's demand. Capataz Operating was forced to waste time and resources to comply with the written and clearly stated demands of the Environmental Protection Agency. Exhibit "C" is a copy of the Capataz Operating, Inc. filing submitted to Brenda Sheen of the EPA on January 19, 2017 in compliance with the EPA order.

By United States Environmental Protection Agency correspondence dated March 6, 2017 (see Exhibit "D") and received via regular mail on March 22, 2017 Capataz Operating has now been told the United State Environmental Protection Agency is "*withdrawing its request that you provide the agency information on your oil and natural gas facilities*". Your withdrawal of the November 14, 2016 order makes clear the EPA demand letter was ill-conceived and should never have been foisted upon my industry. This United States Environmental Protection Agency overreach is a clear example of abuse of the private sector by this Federal agency. For the Environmental Protection Agency to require Capataz Operating, Inc. and a multitude of other oil and gas producers to expend time and funds to comply with an order which should never have been issued is irresponsible and indicative of the unconstitutional power Federal agencies have been allowed to assume. Abuse of regulatory power by the EPA cannot be tolerated or allowed to go unpunished.

By this correspondence I seek your assistance in requiring the United State Environmental Protection Agency reimburse Capataz Operating, Inc. the \$1,100.00 we were forced to expend to comply

with the enclosed United States Environmental Protection Agency demand. Governmental overreach and abuse such as this must have consequences for the employees of the agency. In addition to reimbursing Capataz Operating our cost to "comply" all EPA employees involved in this regulatory inquisition should be fired. At a minimum the following EPA employees should be dismissed:

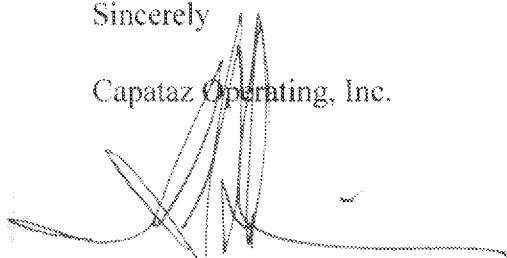
Peter Tsirigotis - Director Sector Programs and Division of Air Quality Planning and Standards
Rob Lawrence -- Policy Advisor -Energy Issues, EPA Region 6
Brenda Shine.

I look forward to seeing evidence these individuals are no longer in the employ of the taxpayers of the United States of America and depositing a reimbursement check for the Environment Protection Agency budget in the amount of \$1,100.00.

Thank you for your assistance.

Sincerely

Capataz Operating, Inc.

A handwritten signature in black ink, appearing to read 'H. Scott Davis', written over a horizontal line.

H. Scott Davis
President

Enclosures:

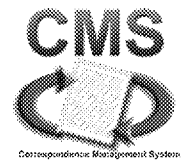
Cc: President Donald Trump
Senator Ted Cruz
Senator John Cornyn
Senator John Barrasso
Congressman Michael Conaway
Congressman John Shimkus
EPA Administrator Scott Pruitt
EPA Director Peter Tsirigotis.



Correspondence Management System

Control Number: AX-17-000-7067

Printing Date: April 04, 2017 02:58:51



Citizen Information

Citizen/Originator: Murphy, Mary Beth

Organization: US Department of the Treasury / Internal Revenue Service

Address: 1111 Constitution Avenue, NW, Washington, DC 20224-0002

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7067 **Alternate Number:** N/A
Status: For Your Information **Closed Date:** N/A
Due Date: N/A **# of Extensions:** 0
Letter Date: Mar 24, 2017 **Received Date:** Apr 3, 2017
Addressee: Linda L. Gray **Addressee Org:** OARM/OHR
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: SNR-Signature Not Required **Signature Date:** N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Soliciting assistance in promoting tax compliance among Federal employees
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: OCFO - OCFO -- Immediate Office
OGC - Office of General Counsel -- Immediate Office
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Brigette Moritz	OEX	OARM	Apr 4, 2017
Karen Johnson	OARM	OARM-OHR	Apr 4, 2017

History

Action By	Office	Action	Date
Brigette Moritz	OEX	Forward control to OARM	Apr 4, 2017
Karen Johnson	OARM	Forwarded control to OARM-OHR	Apr 4, 2017



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
SMALL BUSINESS/Self-EMPLOYED DIVISION

RECEIVED

2017 APR -3 PM 1:14

MAR 24 2017

OFFICE OF THE
EXECUTIVE SECRETARIAT

Ms. Linda L. Gray
Director, Office of Human Resources
Environmental Protection Agency
William Jefferson Clinton Building, 3600A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. Gray:

I am soliciting your assistance in promoting tax compliance among Federal employees, which remains an issue of considerable public importance.

Office of Government Ethics regulation 5 CFR § 2635.809 outlines the responsibility of Federal employees to "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as federal, state, or local taxes that are imposed by law." In 1993, the IRS created the Federal Employee/Retiree Delinquency Initiative (FERDI) to track and report on tax compliance among Federal employees in order to monitor this aspect of adherence to government ethics rules. The IRS produces a summary report every year, identifying the delinquency rate for civilian employees of federal agencies and departments.

The purpose of this letter is to inform you that the most recent annual report has been finalized. On September 30, 2016, 2.76 percent of Environmental Protection Agency personnel had some type of Federal income tax delinquency, up from 2.59 percent in September 2015. Overall, the average delinquency rate for civilian employees of federal agencies and departments was 4.0 percent.

The IRS is prepared to assist your employees in meeting their tax obligations. By visiting IRS.gov and entering *Educating Your Employees About Tax Compliance* in the search box, you will find materials to assist you in discussions with employees on steps to take to ensure tax compliance. The IRS also offers a number of online tools, accessible by clicking Tools on the IRS.gov home page, to assist your employees in filing returns, paying their taxes, and resolving tax delinquencies. These tools include electronic payment options which allow taxpayers to make payments using credit and debit cards or through electronic funds transfers from their bank account.

The Online Payment Agreement Application is also available, which allows most taxpayers to establish an Installment Agreement online to pay their tax liability in monthly installment payments. Your employees may also call us toll-free at (800) 829-1040 or visit their local IRS office for assistance with resolving any balance owed.

I encourage you to communicate this message to your workforce. Together, we can improve tax compliance and help foster public confidence in government.

If you have any questions regarding the information provided, please contact me, or a member of your staff may contact Emilie Frazier, Senior Tax Analyst, at (240) 613-5197.

Sincerely,


Mary Beth Murphy
Commissioner SB/SE

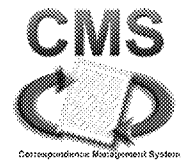
cc: Scott Pruitt, Administrator, Environmental Protection Agency
John A. Koskinen, Commissioner of Internal Revenue



Correspondence Management System

Control Number: AX-17-000-7107

Printing Date: April 04, 2017 03:52:18



Citizen Information

Citizen/Originator: Lewis, Michael W.

Organization: Construction Industry Air Quality Coalition

Address: 2149 East Garvey Avenue North, West Covina, CA 91791

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7107

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 19, 2017

of Extensions: 0

Letter Date: Mar 29, 2017

Received Date: Apr 4, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: ASO-OP-Associate
Administrator-OP

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Issues with the regulatory process

Instructions: ASO-OP-Prepare draft response for signature by the Associate Administrator for OP

Instruction Note: N/A

General Notes: Copy provided to Aaron Dickerson to handle meeting request (jl)

CC: Derek Threet - AO-IO
Kristien Knapp - AO-IO
OAR - Office of Air and Radiation -- Immediate Office
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office
R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OP	Apr 4, 2017	Apr 19, 2017	N/A
Instruction: ASO-OP-Prepare draft response for signature by the Associate Administrator for OP					

Supporting Information

Supporting Author: N/A

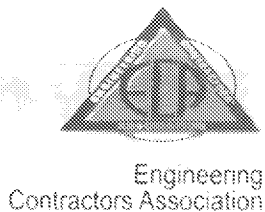
Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			



CONSTRUCTION INDUSTRY AIR QUALITY COALITION

Coalition Members



RECEIVED

2017 APR -4 AM 11: 07



Construction Industry Coalition on Water Quality

March 29, 2017

Administrator Scott Pruitt
Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Mr. Pruitt:

Congratulations on your confirmation as Administrator of the US EPA.

The construction industry in California looks forward to your leadership and assisting you in reshaping the regulatory landscape to achieve our environmental goals and grow our economy. **The Construction Industry Air Quality Coalition** and the **Construction Industry Coalition on Water Quality** have been involved in the regulatory arena in California for over two decades. We have developed a well-deserved reputation for thoughtful and practical solutions to our Nation's environmental challenges.

Our Construction Industry Air and Water Quality Coalitions are composed of the Associated General Contractors of California, the Building Industry Association of Southern California, the Engineering Contractors Association the Southern California Contractors Association, United Contractors and the Western States Trucking Association. We have over 2000 contractor members employing over 300,000 workers in California.

We live and work in the most costly and regulated environment in the country. We know there are better ways to achieve our environmental goals and grow our economy. Unfortunately, our policy makers in California believe that jobs are bad for the environment and business cannot be an equal partner in solving environmental challenges.

There are many issues in the California regulatory process where we believe that the USEPA can be helpful in supporting the growth of business while still benefiting the environment in California. We want to bring to your attention several areas where California has pursued regulation where there is no scientific support for their conclusion that it will result in emission reductions or improved water quality.

The Science of "Premature Death"

This term is used extensively in California to justify all sorts of regulations related to carbon and combustion. Despite the fact that CARB's own scientists admitted that their California specific health data does not demonstrate a premature death effect from particulate matter. In fact, independent studies over many decades of California specific health records indicate that there hasn't been any identifiable effect on premature death in California from particulate matter since the mid 1980's. In the one study still cited by CARB, the Canadian author has never been willing to make the data available for peer review. As a result, there is a growing chorus of researchers, epidemiologists and scientists who contest this "premature death" assumption.

If you look at mortality in general across the United States, California is the second healthiest state in the union and Southern California is healthier than California as a whole. If you look at asthma as one of the frequently cited effects of air pollution, in the last 40 years, asthma cases have skyrocketed while air pollution has declined by over 70%. The old adage that our ever-improving air is causing ever increasing health effects is simply not true. But, unproven health effects are still being flouted as the motivation for all of our air quality regulations in California.

We hope that USEPA will review this “premature death” fiction and require California to use real data for their rule and regulation justification.

Modeling vs. Monitoring

As we have seen with climate change, constructing an air quality model that accurately reflects the real circumstance is difficult to do. And as sophisticated as our emissions modeling is in California it still does not accurately reflect the real air quality picture. In fact, we looked independently at South Coast Air Quality Management District’s modeling projections over the last ten years and compared those to the actual monitor readings. We discovered that the model used for regulatory development predicts slower reductions in emissions than the monitors actually reflect. Obviously, this shows we are getting to our goal faster than the model shows and it means we may not need as many measures as the model indicates. The regulators have no incentive however to calibrate the model and the monitors. That penalizes the business community to the tune of billions of dollars in unnecessary costs.

The USEPA review of the newly adopted State Implementation Plan should include an analysis of the emissions modeling and monitoring data for accuracy and consistency.

Indirect Source Regulations

The newest fashion in air quality regulations in California are “Indirect Source Rules”. Adopting an ISR is tantamount to admitting that an agency has no legal authority or control over a pollution source but they are nevertheless going to pass the responsibility for those emissions to a third party and make them responsible for finding a way to reduce them. There is simply no evidence to suggest that this strategy works. In fact, most ISR’s have a fee associated with them which really become a tax burden for the third party to buy their way out of the responsibility. It’s just another way to generate revenue for regulators.

You will see in the new SIP being submitted by California ISR’s proposed for ports, airports, railyards and logistics facilities. In most of these cases, this is an attempt to get at “federal” sources otherwise beyond the reach of the regulators. Those same sources are certainly beyond the reach of the ports, airports and distribution facilities being tasked with reducing their emissions. Pursuing this ISR approach will significantly delay the development of voluntary reduction plans proposed by the ports, airports, railyards and distribution centers.

EPA should closely examine these ISR proposals in the California SIP to determine their authority to control those sources and the effectiveness of those ‘indirect’ measures in the first place.

Incentives vs. Regulations

We believe that much can be achieved by incentive funding. We have first-hand experience with both the Carl Moyer and the S.O.O.N. Programs. Using incentive monies to replace, repower and retrofit our off-road construction equipment we have reduced 100s of tons of NOx beyond the regulatory goal. All of these were excess emissions that were eliminated because matching funds were available to achieve extra voluntary emission reductions.

These programs along with the RECLAIM program worked very effectively for the business community. We hope that USEPA will support expansion of the use of incentives as our technology options become more and more expensive the closer we get to zero emissions. Incentives are cost effective and have proven results.

Water Quality

In addition to our work in the air quality arena, we were the first advocates for regional solutions to storm water pollution reduction and we have devised a tool box of effective Best Management Practices for the control of runoff from construction sites. We have funded research on the effectiveness of BMP's for construction sites and we have advocated for simplified reporting of runoff test monitoring results. We have also worked with Orange County Public Works to develop a framework for a storm water pollution credit trading program that we believe will achieve greater results than any regulatory approach.

California Water Fix

The single most important infrastructure project in California is the Delta water tunnels. This project is necessary to preserve the Delta, protect the habitat and endangered species and provide a reliable water supply to Southern California. It will be paid for by the users and it will generate significant construction jobs as well. It is critical that the go-ahead on this project is finalized while the current Governor is in office. Responding to our on-going droughts cannot wait any longer for a solution. The Trump Administrations support for this project is vital to its completion.

Corps of Engineers

We have participated in extensive planning in Southern California to capture and reuse storm water. One of the key components of those plans is the use of the Federal dams which are operated by the Corps of Engineers. There are five such dams in Los Angeles County alone. But before they can be used for retention, storage and spreading of storm water, they need to be repaired and upgraded. Expanding Federal funding for this purpose, and/or allowing the local agencies to fund repairs would enable these vitally need storm water capture projects to proceed. USEPA's advocacy for this effort would benefit everyone involved.

Waters of The United States

The proposed WOTUS rule was a significant overreach of EPA authority. We believe there are far better ways to achieve greater protection for rivers, lakes and oceans. We support the Administration's efforts to withdraw the current proposal and work with stakeholders to devise an appropriate alternative.

Just because California was the first to do it, doesn't make it the right way to do it. We are anxious to share some of our ideas with you and hope that we can partner to move California in a more productive and effective direction in achieving our environmental goals.

There are some important lessons to be learned from our experiences in California. We hope we can share them with you and your staff at your earliest convenience. Please let us know if we can sit down with you or your representatives to outline our concerns in these important areas in more detail.

Sincerely,



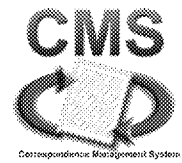
Michael Lewis
Senior Vice President
951-206-4420 cell



Correspondence Management System

Control Number: AX-17-000-7112

Printing Date: April 04, 2017 02:46:22



Citizen Information

Citizen/Originator: Landry, Jeff

Organization: State of Louisiana Department of Justice
Address: P.O. Box 94005, Baton Rouge, LA 70804-9005

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7112 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 19, 2017 **# of Extensions:** 0
Letter Date: Mar 27, 2017 **Received Date:** Apr 4, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AA-OAR-Assistant Administrator **Signature Date:** N/A
- OAR
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Tier Four Engine Emission Standard 40 CFR Part 1042
Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OPA - Office of Public Affairs
R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Apr 4, 2017	Apr 19, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



Jeff Landry
Attorney General

State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

RECEIVED
2017 APR -4 AM 11:08
OFFICE OF THE
EXECUTIVE SECRETARIAT

March 27, 2017

Scott Pruitt
Administrator
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Tier Four Engine Emission Standard
40 CFR Part 1042

Dear Administrator Pruitt:

As a life-long resident of one of our nation's most important districts to domestic oil and gas production, I write to discuss a policy of the Environmental Protection Agency that promises to exacerbate inefficiencies and safety hazards for the businesses and workers whose tireless effort powers the American dream. In 2008, the EPA began placing higher and higher emissions restrictions on newly manufactured, high-horsepower marine diesel engines. To meet these standards, many marine vessel owners have resorted to the most feasible option of exhaust scrubbing. This process involves integrating urea into the exhaust system of a marine diesel engine. The urea burns and is converted to ammonia which scrubs the exhaust, bringing the emissions rate within federally mandated levels.

Tier Four of these standards seeks to reduce emissions by an additional 80% from the levels currently allowed under Tier Three. However, this extreme increase in emissions demands is coupled with extreme increases in capital costs, consumer costs, and risks of serious injury to our maritime workers. To comply with the regulation, vessel owners will need to expend an average of nearly \$500,000 per vessel, a cost not recoverable under the industry's rate structure. As more urea is required to scrub exhaust systems, daily operational costs of vessels equipped with these engines will also increase each vessel's yearly fuel costs by between \$125,000 and \$300,000. These costs are traditionally borne by the entity hiring the vessel, meaning that these costs will be passed on to the eventual consumer.

Most troubling are the safety hazards that maritime employees will face if standards are not addressed. One such hazard is the electronic management system that causes engine failure if the

scrubbing system fails or exhausts its store of urea. A mechanically sound vessel left adrift by a failure of a regulatory apparatus poses a danger to not only the vessel workers, but to the public, the environment, and both public and business infrastructure as well. That such a vessel would be left dead in the water by the operation of this regulation poses a very real and substantial danger. Further, the need to store even more amounts of urea on board to avoid the engine failure mentioned above increases the risk of vessel crew exposure to ammonia in the event of a fire. When considered in the context of a vessel underway in open water, a water evacuation becomes a very risky necessity and also leaves the vessel adrift to pose the same dangers discussed above.

During my time serving the people of south Louisiana in Congress, I fought over-burdensome regulation that killed jobs and endangered workers. This newest tier of emissions standards represents yet another salvo lobbed at one of our nation's most important energy and resource industries. I have attached a letter from Richard A. Gonsoulin, CEO of LeBeouf Brothers Towing, LLC. Mr. Gonsoulin's letter states the very real costs and dangers posed by this regulation, and I pray that you seriously consider the implications of this regulation and explore any options available to alleviate this unnecessary burden on workers, businesses, and consumers alike.

Very truly yours, I remain

A handwritten signature in black ink, appearing to read "Jeff Landry", with a long horizontal flourish extending to the right.

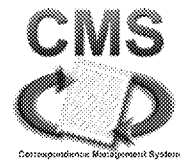
Jeff Landry
Louisiana Attorney General



Correspondence Management System

Control Number: AX-17-000-7113

Printing Date: April 04, 2017 01:59:01



Citizen Information

Citizen/Originator: Sims, Jeffrey M.

Organization: Truck Trailer Manufacturers Association
Address: 7001 Heritage Village Plaza, Gainesville, VA 20155

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7113 **Alternate Number:** 7788 0708 9832
Status: Pending **Closed Date:** N/A
Due Date: Apr 19, 2017 **# of Extensions:** 0
Letter Date: Apr 3, 2017 **Received Date:** Apr 4, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AA-OAR-Assistant Administrator **Signature Date:** N/A
- OAR
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Request to Reconsider and Stay Phase 2 Greenhouse Gas and Fuel Efficiency Standards for Truck Trailers
Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Apr 4, 2017	Apr 19, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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Jeffrey M. Sims • President
7001 Heritage Village Plaza • Suite 220 • Gainesville, VA 20155 • 703-549-3010

April 3, 2017

Scott Pruitt, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Elaine L. Chao, Secretary
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

RECEIVED
2017 APR -4 AM 11:06
OFFICE OF THE
EXECUTIVE SECRETARY

Re: Request to Reconsider and Stay Phase 2 GHG and Fuel Efficiency Standards for Truck Trailers

Dear Administrator Pruitt and Secretary Chao:

I am writing to request your immediate intervention to resolve a pending petition filed by the Truck Trailer Manufacturers Association (TTMA) in the US Court of Appeals for the District of Columbia Circuit to review the greenhouse gas fuel economy standards for heavy-duty truck trailers. TTMA's members manufacture nearly all of the heavy-duty truck trailers sold and operated in the United States. We represent over 70 trailer manufacturers with offices and plants located in over 33 states. Most of these manufacturing companies are closely-held, family-owned businesses. Our members' customers comprise cargo shippers and motor carrier fleets, large and small, as well as independent owner-operators, who together move nearly all of the nation's commercial truck freight.

The new greenhouse gas standards unlawfully treat trailers as "motor vehicles" and unwisely mandate installation of aerodynamic equipment on the vast majority of trailers, regardless of actual use. Because the industry already installs this equipment in those uses where it saves fuel, the standards will substantially burden the motor carrier industry and produce little or no additional greenhouse gas or fuel economy gain. Moreover, we believe that the President's March 28, 2017 Executive Order requiring review and, as appropriate, suspension, revision or rescission of actions arising from President Obama's June 2013 Climate Action plan directly applies to these standards. We therefore ask that EPA and NHTSA review, reconsider and begin a process to rescind these standards. We further ask EPA and NHTSA to take steps to suspend or stay the effectiveness of the standards in the interim, due to the burden of imminent steps that trailer manufacturers otherwise must take to comply. We ask to meet with you or your designees at your earliest convenience to address this matter, which is urgent for our members, their employees and customers.

* * *

1. *The Standards.* On October 25, 2016, EPA and NHTSA promulgated “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2” (GHGP2), which the agencies expressly described as having been “called for” in the 2013 Climate Action Plan. 81 Fed. Reg. 73,478, 73,480 (Oct. 25, 2016). Beginning with 2018 trailer production, the new GHGP2 standards will mandate installation of side skirts, trailer tails, low-rolling resistance tires and tire monitoring/inflation systems on most trailers manufactured and sold in the United States by TTMA’s members. Trailer manufacturers must install and sell this equipment even if the trucking operations of their customers will not achieve any fuel economy benefits (such as circumstances in which the trailers will not be hauled over long distances at highway speeds sufficient to produce any benefits).

2. *Petition for Review and Deficiencies in Rule.* On December 22, 2016, TTMA petitioned for review of the trailer standards in the United States Court of Appeals for the District of Columbia Circuit (Case No. 16-1430). TTMA intends to raise several objections to the rule:

The agencies lack statutory authority. EPA’s authority under the Clean Air Act to set standards for mobile sources is limited to engines and “motor vehicles,” defined in the statute to mean “self-propelled vehicle[s] designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2). Trailers are not self-propelled. Trailers are not equipped with engines that provide the power needed to transport cargo and thereby consume fuel or cause air emissions. EPA’s contention that trailers are part of the motor vehicle tractor-trailer combination makes no sense. Tractors and trailers are manufactured and sold separately by different sets of manufacturers to customer populations that are not the same; a single trailer is likely to be hauled by multiple tractors during its lifetime and, conversely, a single tractor is likely to haul multiple trailers. Moreover, in the nearly fifty years since EPA has been regulating emissions from heavy-duty engines and trucks, it has never treated the trailer as part of a truck so as to fall within the definition of “motor vehicle,” and there is no evidence Congress ever intended such a result. Likewise, NHTSA lacks statutory authority. Its governing authority for fuel economy standards, the Energy Independence and Security Act (EISA), also does not define heavy-duty “vehicle” to include a trailer. In the rulemaking, NHTSA has erroneously relied instead on definitions in the Motor Vehicle Safety Act, which separately authorizes NHTSA to adopt safety regulations but does not address fuel efficiency or emissions of any kind. *See* 49 U.S.C. § 30101.

The standards are arbitrary and capricious. The GHGP2 standards for trailers, if implemented, will do little to reduce greenhouse gas emissions or improve fuel economy. TTMA members and the trucking industry already participate extensively in EPA’s voluntary Smartway program to develop and incorporate aerodynamic equipment in trailers where there are benefits from doing so. This is particularly true for trailers hauled regularly over long distances at highway speeds, where aerodynamic efficiency makes a measurable difference. But aerodynamic devices such as side skirts and trailer tails also add significant weight to trailers and thus are counterproductive in multiple short-run operations and at lower speeds (where most of the trailers’ moving time occurs). In lower speed operations, aerodynamic efficiency is not achieved and the equipment is only counter-productive dead weight. EPA and NHTSA erroneously assumed in the rulemaking that tractor-trailers, on average, operate near highway speeds most of the time. Moreover, heavy-duty trucks are subject to an 80,000-pound maximum combined weight limit for tractor, trailer and cargo. Because the GHGP2 rule will mandate aerodynamic equipment on trailers, trucking companies who already haul loads that are at or near this limit in order to maximize efficiency will have to reduce the cargo in each load and haul the excess on additional trailers. The result will be more (and heavier) tractor-trailers on the nation’s highways to haul the same total amount of freight. In addition to the costs of the aerodynamic equipment, this will add more trucks burning more fuel with more emissions, especially in low-speed service for which the additional equipment has no material benefits. It will also result in more accidents and more injuries and fatalities involving tractor-

trailers, which is contrary to NHTSA's primary mission under the Motor Vehicle Safety Act. 81 Fed Reg. at 73,642.

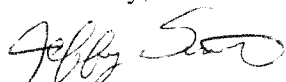
3. *The Executive Order Requires Review, Reconsideration and Rescission.* Section 3(d) of President Trump's March 28, 2017 Executive Order mandates that all agencies review and identify actions that are related to or arose from President Obama's June 2013 Climate Action Plan. As noted above, the GHGP2 rule, including the trailer standards, are clearly within the scope of this Order. The Order further directs that each agency shall, as soon as practicable, publish for notice and comment proposed rules suspending, revising, or rescinding any such actions, as appropriate and consistent with law and the policies stated in Section 1 of the Order. The Order states in its very first sentence as policy to avoid regulatory burdens that unnecessarily constrain economic growth and prevent job creation. Section 1 goes on to elaborate as policy that environmental regulations must comply with the law, have greater benefits than costs, and rely on the best available peer-reviewed science and economics. For the reasons described above, the trailer requirements in the GHGP2 rule conflict with these policies.

Furthermore, we note that in seeking to justify the costs as outweighing the benefits of the GHGP2 rule, EPA relied on the Obama Administration's "social cost of carbon." See 81 Fed. Reg. at 73,875 (explaining that the agencies "estimate the global social benefits of CO₂ emission reductions expected from the heavy-duty GHG and fuel efficiency standards using the social cost of carbon"). The March 28 Executive Order directed that the prior Administration's social cost of carbon analyses be withdrawn, and that, effective immediately, agencies shall ensure that estimates used in valuing the GHG impacts of regulations be consistent with OMB Circular A-4 (Sept. 17, 2003). The Order specifically directed that this include the approach to considering domestic versus international impacts and the consideration of the appropriate discount rates. Accordingly, the Order directs a new approach, effective immediately, that is different from and in conflict with the approach EPA used to justify the GHGP2 standards, which the Order makes clear is "no longer representative of government policy." Not only does this constitute a further policy reason to revisit the trailer requirements, but it constitutes centrally relevant new information warranting reconsideration of the rule under Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B).

4. *EPA Action is Urgent to Avoid Substantial Economic Impacts.* As anticipated in the directive of Section 3(d) of the Executive Order that the agencies take action "as soon as practicable," this matter is of great time sensitivity to TTMA's members. Although the GHGP2 standards apply to trailers manufactured after January 1, 2018, the standards will have costly impacts on trailer manufacturers in the latter half of 2017. The manufacturers will soon have to quote and commit in advance to trailer orders for production in 2018, and they will soon begin incurring substantial expenditures for parts inventory and for reconfiguring manufacturing plants and assembly lines to enable installation of the required devices. These are, in many cases, small- to medium-sized businesses throughout the country who can ill afford the unnecessary burdens of these standards, which will impact them, their employees, customers and the economy at large.

TTMA would like to meet with you or your designees to seek an immediate path to reconsideration of the GHGP2 trailer requirements and an approach to stay the effectiveness of the rule in the interim to avoid the burden and disruption of imminent steps to comply. We very much appreciate your attention to this important matter and your consideration of our requests on an expedited basis.

Sincerely,


Jeff Sims, President

Message

From: Wade, Alexis [Wade.Alexis@epa.gov]
Sent: 2/17/2017 4:20:42 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]

Subject:

Attachments:

Attorney Client/AWP Ex. 5



ENV_DEFENSE-...

Hi all

Attorney Client/DP/AWP Ex. 5

Please let me know if you have any comments or questions.

Thanks,
Alexis

Alexis Wade
Attorney-Adviser
Water Law Office
EPA Office of General Counsel
(202) 564-3273

Message

From: Horwitz, Sylvia [Horwitz.Sylvia@epa.gov]
Sent: 1/30/2017 4:28:28 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: FYI - upcoming moot court
Attachments: Attorney Client / Ex. 5

This document has all the attachments.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Sylvia Horwitz
Office of General Counsel
Water Law Office
WJC North 7353H
Phone: 202-564-5511

From: Schwab, Justin
Sent: Monday, January 30, 2017 9:41 AM
To: Horwitz, Sylvia <Horwitz.Sylvia@epa.gov>
Subject: RE: FYI - upcoming moot court

Sylvia –

Thanks again for these papers. I found them very interesting, and look forward to listening in on as much of today's moot as I am able.

Attorney Client / Ex. 5

Thanks!

Best,

Justin

From: Horwitz, Sylvia
Sent: Thursday, January 26, 2017 6:20 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: RE: FYI - upcoming moot court

Justin –

Thanks for your quick reply!

There are four briefs:

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Here is the call-in information for the moot court:

Call-in information:

Dial-in number: **Conference Line/Code / Ex. 6**

Conference code: **Conference Line/Code / Ex. 6**

I will also forward the calendar invitation. Kate Bowers is the attorney arguing the case.

Sylvia

Sylvia Horwitz
Office of General Counsel
Water Law Office
WJC North 7353H
Phone: 202-564-5511

From: Schwab, Justin
Sent: Thursday, January 26, 2017 6:00 PM
To: Horwitz, Sylvia <Horwitz.Sylvia@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: RE: FYI - upcoming moot court

Thank you, Sylvia!

I will plan to attend by phone if I can keep that block of time free. Please send the briefs and decision if it is not too laborious to do so.

Best,

Justin

From: Horwitz, Sylvia
Sent: Thursday, January 26, 2017 5:59 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: FYI - upcoming moot court

Attorney Client / Ex. 5

Please let me know if you would like to attend the moot court, and if so, whether you expect to attend in person or by phone.

Sylvia Horwitz
Office of General Counsel
Water Law Office
WJC North 7353H
Phone: 202-564-5511

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 2/23/2017 1:58:25 AM
To: Schwab, Justin [schwab.justin@epa.gov]; Schnare, David [schnare.david@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]

Subject:
Attachments:

Attorney Client / Ex. 5

Flag: Flag for follow up

David and Justin- The links below and the attachments to this email provide the information you requested at our meeting last week. If you need anything further, please let Lorie or me know.

Attorney Client / Ex. 5

Again, please let us know what else you need. We look forward to continuing the conversation.

+++++

202-564-5647 (o)

Personal Phone / Ex. 6 (c)

From: Schnare, David

Sent: Friday, February 17, 2017 3:41 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>

Cc: Schwab, Justin <schwab.justin@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>

Subject: Re: Follow up on endangerment

Thank you. Very timely.

dschnare

Sent from my iPhone

On Feb 17, 2017, at 3:39 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

David and Justin,

Attorney Client / Ex. 5

Our goal is to email these to you on Tuesday or Wednesday. If that timing is problematic, please let me know.

Have a good week-end,

Lorie

Lorie Schmidt

Associate General Counsel, Air and Radiation

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ORAL ARGUMENT SCHEDULED FOR FEBRUARY 28, 2012**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT****No. 09-1322, and consolidated cases (Complex)**

COALITION FOR RESPONSIBLE REGULATION, et al.,**Petitioners,****v.****UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND
LISA P. JACKSON, ADMINISTRATOR,****Respondents.**

**ON CONSOLIDATED PETITIONS FOR REVIEW OF FINAL ACTIONS
BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

BRIEF FOR RESPONDENTS

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DATED: November 14, 2011 (Final Brief (corrected))

**RESPONDENTS' CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

Pursuant to D.C. Circuit R. 28(a)(1), Respondents United States Environmental Protection Agency (“EPA”) and Lisa P. Jackson, Administrator of EPA, submit this certificate as to parties, rulings and related cases.

(A) Parties and amici: With two exceptions, the parties and amici to this action are those set forth in the certificates filed with the Joint Opening Brief of Non-State Petitioners and Supporting Intervenors (hereinafter “Ind. Br.”), the Brief of Texas for State Petitioners and Supporting Intervenors (hereinafter “Tx. Br.”), and the Opening Brief for State Petitioners Texas and Virginia on Denial of Reconsideration of the Endangerment Finding and of State Petitioners and Supporting State Intervenors on Endangerment Finding Delegation Issues (hereinafter “Va. Br.”). The exceptions are: (1) on July 7, 2011, the Court granted the State of Kansas leave to file an amicus brief in support of Petitioners; and (2) on August 5, 2011, the Court granted the Commonwealth of Pennsylvania’s motion to withdraw as an Intervenor.

(B) Rulings under review: This case is a set of consolidated petitions for review of EPA’s “Endangerment Finding,” 74 Fed. Reg. 66,496 (Dec. 15, 2009), and denial of petitions to reconsider the Endangerment Finding (“Reconsideration Denial”), 75 Fed. Reg. 49,556 (Aug. 13, 2010).

(C) Related cases: Each of the petitions for review consolidated under No. 09-1322 is related. In addition, pursuant to this Court's prior orders, this case (No. 09-1322) will be argued before the same panel as the consolidated actions in Nos. 10-1167, 10-1092, and 10-1073.

DATED: November 14, 2011

/s/ Angeline Purdy
Counsel for Respondents

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GLOSSARY

ANPR	Advanced Notice of Proposed Rulemaking
AR4	Fourth Assessment Report (Intergovernmental Panel on Climate Change)
CAA	Clean Air Act or the Act
CAFE	corporate average fuel economy
CH ₄	methane
CO ₂	carbon dioxide
DOT	United States Department of Transportation
EPA	Respondent United States Environmental Protection Agency
HFCs	hydroflourocarbons
IPCC	Intergovernmental Panel on Climate Change
Ind. Br.	Joint Opening Brief of Non-State Petitioners and Supporting Intervenors
JA	Joint Appendix
Kan. Br.	Brief Amicus Curiae of the State of Kansas in Support of Petitioners
NAAQS	national ambient air quality standards
N ₂ O	nitrous oxide
NHTSA	National Highway Traffic Safety Administration
NRC	National Research Council of the National Academies

Non-State Amicus Br.	Brief of Amici Curiae in Support of Petitioners
PFCs	perflourocarbons
PM	particulate matter
PSD	prevention of significant deterioration
RTC	Response to Comments
RTP	Response to Petitions to Reconsider Endangerment Finding
SAB	Science Advisory Board
SF ₆	sulfur hexafluoride
TSD	Technical Support Document
Tx. Br.	Brief of Texas for State Petitioners and Supporting Intervenors
USGCRP	United States Global Change Research Program
Va. Br.	Opening Brief for State Petitioners Texas and Virginia on Denial of Reconsideration of the Endangerment Finding and of State Petitioners and Supporting State Intervenors on Endangerment Finding Delegation Issues
VOCs	volatile organic chemicals
W/m ²	watts per square meter

INTRODUCTION

In Massachusetts v. EPA, 549 U.S. 497, 529, 533 (2007), the Supreme Court reversed EPA's denial of a petition seeking regulation of greenhouse gas emissions from new motor vehicles under section 202(a) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7521(a). See 68 Fed. Reg. 52,922 (Sept. 8, 2003). The Court required EPA to determine on remand whether greenhouse gases endanger public health or welfare, or else explain why it could not, focusing the Agency's inquiry narrowly on the science. General "policy judgments" that are not grounded in the statutory endangerment factors "have nothing to do with whether greenhouse gas emissions contribute to climate change" and cannot provide a "reasoned justification for declining to form a scientific judgment." Id. at 533-34. The Court further instructed that "residual uncertainty" about the science of climate change is "irrelevant" to EPA's inquiry; only "scientific uncertainty . . . so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming" could justify a decision not to regulate.

In the December 2009 "Endangerment Finding," the Administrator determined that greenhouse gas concentrations in the atmosphere may reasonably be anticipated to endanger public health and welfare and that emissions from motor vehicles contribute to this pollution. 74 Fed. Reg. 66,496 (Dec. 15, 2009). In support of this judgment, the Agency explained, inter alia, that greenhouse gas

concentrations in the atmosphere have risen to unprecedented levels as the result of human activities, that this buildup of atmospheric gases has been a substantial cause of warming over the past half-century, and that this warming is causing and will continue to cause a variety of adverse effects to human health and welfare in this country. Numerous parties filed administrative petitions for reconsideration and the Administrator denied those petitions in the “Reconsideration Denial.” 75 Fed. Reg. 49,556 (Aug. 13, 2010). This case, No. 09-1322, is a consolidated set of petitions for review of the Endangerment Finding and the Reconsideration Denial.

As we will explain herein, the conclusions reached by EPA in both the Endangerment Finding and the Reconsideration Denial are fully consistent with the statute and are well-supported, if not compelled, by the scientific information in the extensive administrative record compiled by EPA. Indeed, many of the arguments Petitioners present in this case are similar to those the Supreme Court rejected in Massachusetts, e.g., that Congress could not possibly have intended EPA to regulate greenhouse gases under the Act, that the science of climate change is too uncertain, that the costs of regulating are too great, and that greenhouse gas emissions from new motor vehicles are better addressed through the Department of Transportation’s (“DOT’s”) fuel economy standards.

Because section 202(a) obligates EPA to issue vehicle emission standards following a positive endangerment finding, see Massachusetts, 549 U.S. at 532,

EPA then promulgated greenhouse gas standards for new light-duty motor vehicles for model years 2012-2016. See 75 Fed. Reg. 25,324 (May 7, 2010) (the “Vehicle Rule,” challenged in No. 10-1092). Significantly, no one challenges the substance of the Vehicle Rule’s emission standards (i.e., no one contends either that they are too stringent or not stringent enough).

Instead, although the Endangerment Finding and the Vehicle Rule address greenhouse gas emissions from motor vehicles, a substantial part of Petitioners’ challenges to those actions is based on concerns about the costs and other burdens of regulating such emissions from *stationary* sources. This is because once greenhouse gas emissions from motor vehicles became regulated through the Vehicle Rule, the Act automatically made certain large stationary sources of greenhouse gas emissions (such as factories and power plants) subject to the CAA prevention of significant deterioration (“PSD”) and Title V permit programs. On these issues, the Administrator properly determined that she had no leeway to decline to find endangerment or to decline to promulgate greenhouse gas standards for motor vehicles solely to stave off stationary source regulation of greenhouse gas emissions, given her clear responsibilities under the statute and the compelling scientific record regarding endangerment.

The Agency nonetheless took action to assure that regulation of greenhouse gas emissions from stationary sources under the PSD and Title V programs would

be implemented in the most appropriate and orderly manner possible. First, in the “Timing Decision,” 75 Fed. Reg. 17,004 (Apr. 2, 2010), EPA determined that greenhouse gases did not become “subject to regulation” (and thus subject to PSD and Title V requirements) until January 2, 2011, the first date on which certain newly-manufactured vehicles must comply with the emission standards in the Vehicle Rule. Second, in the “Tailoring Rule,” 75 Fed. Reg. 31,514 (June 3, 2010), EPA developed a format and timeframe to phase-in PSD and Title V requirements in a manner that accounts for the practical constraints of the permitting system, starting with the largest sources of greenhouse gas emissions. The challenges to the Timing Decision and the Tailoring Rule have been consolidated in No. 10-1073.

As demonstrated below, there is overwhelming legal and technical support for the Administrator’s judgment that greenhouse gases may reasonably be anticipated to endanger public health and welfare, and that motor vehicle emissions contribute to the problem. Further, as EPA’s briefs in all these companion cases collectively show, the Endangerment Finding, the Vehicle Rule, the Timing Decision, and the Tailoring Rule represent, as a whole, a regulatory response to climate change that is fair, feasible, and faithful to the Agency’s duties under the Act.

JURISDICTION

The consolidated petitions for review of the Endangerment Finding and Reconsideration Denial were timely filed pursuant to 42 U.S.C. § 7607(b). The Court does not need to scrutinize the standing of all Petitioners since at least some Petitioners appear to have alleged standing adequately to challenge the Endangerment Finding based on asserted injuries as fleet purchasers of motor vehicles. See Ind. Br. 12; Va. Br. 21; Tx. Br. 14; see also, e.g., Massachusetts v. EPA, 549 U.S. at 518.

STATUTES AND REGULATIONS

The pertinent statutes and regulations are set forth in the addendum to Petitioners' briefs. EPA has also included certain frequently-cited authorities in the addendum to this brief.

STATEMENT OF ISSUES

Section 202(a)(1) of the Act, 42 U.S.C. § 7521(a)(1), directs the Administrator to determine whether, in her “judgment,” “air pollution” (in this case the mix of six greenhouse gases in the atmosphere) may “reasonably be anticipated to endanger public health or welfare.” If the Administrator determines that it does, the statute directs her to determine whether motor vehicle emissions “cause” or “contribute” to this “air pollution.” Id. If the Administrator answers that question in the affirmative, the Act requires the Agency to set emission standards taking

into account the cost and technology factors set forth in Section 202(a)(2), 42 U.S.C. § 7521(a)(2). Against this background:

1. Did EPA reasonably construe Section 202(a)(1) to limit the endangerment inquiry to scientific issues bearing on the Administrator's "judgment" as to the effects of atmospheric greenhouse gas concentrations on public health and welfare, and the question of whether greenhouse gas emissions from motor vehicles cause or contribute to that air pollution?
2. Did the extensive administrative record compiled by EPA, including a 210-page technical support document ("TSD"), an 11-volume response to comments document ("RTC"), and a 50-page Federal Register notice, adequately explain and support the Administrator's judgment that elevated concentrations of greenhouse gases in the atmosphere may reasonably be anticipated to endanger public health and welfare?
3. Did EPA properly deny the petitions for administrative reconsideration of the Endangerment Finding, where, among other things, the Petitioners failed to raise issues of "central relevance" and could have but failed to raise some issues in comments on the proposed Endangerment Finding?
4. Did EPA reasonably define the "air pollutant" at issue in this case to be a mix of six greenhouse gases that are all directly-emitted, long-lived, contributors to climate change?

5. Did EPA reasonably decline to construe Section 202(a)(1) as requiring the Agency to gauge the presence or absence of an endangerment through a quantitative assessment of safe and unsafe levels of air pollution and climate change?

6. Did EPA reasonably decline to construe Section 202(a)(1) as requiring EPA to determine, before making an endangerment finding, the extent to which motor vehicle emission standards could ameliorate any endangerment?

7. Does Section 202(a)(1) preclude EPA from considering (or at least not require EPA to consider), before making an endangerment finding, additional factors not mentioned in Section 202(a)(1), such as the impact of possible stationary source regulation of greenhouse gas emissions, the social benefits of pollution-causing activities, and the extent to which society can mitigate, or adapt to, the adverse effects of climate change?

8. Are Petitioners' claims concerning review of the Endangerment Finding by the Science Advisory Board ("SAB") barred by various waiver principles and, in any event, meritless?

STATEMENT OF THE CASE

The central issue at the core of this case – climate change – is undoubtedly one of “unusual importance,” Massachusetts v. EPA, 549 U.S. at 506, and “[t]he harms associated with climate change are serious and well-recognized.” Id. at 521.

Yet, as in Massachusetts, “[a]lthough this case comes to us in the context of a highly controversial question – global warming – it actually presents a quite traditional legal issue: has the Environmental Protection Agency complied with the Clean Air Act?” Massachusetts v. EPA, 415 F.3d 50, 82 (D.C. Cir. 2005) (Tatel, J., dissenting), reversed, 549 U.S. 497 (2007). In this case, the Endangerment Finding and Reconsideration Denial must be upheld because those decisions are fully consistent with the Act and are well-supported by a comprehensive administrative record.

STATEMENT OF FACTS

I. STATUTORY BACKGROUND

A. Definitions.

Section 302(g) of the Act, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air[,]” including any precursors to the formation of such air pollutant. The term “effects on welfare” is defined by Section 302(h), 42 U.S.C. § 7602(h), to include “effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to . . . property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being”

B. CAA Mobile Source Provisions.

Title II of the Act, 42 U.S.C. §§ 7521-7590, establishes a regulatory framework for controlling pollution from motor vehicles and other mobile sources. Section 202(a)(1), 42 U.S.C. § 7521(a)(1), authorizes EPA to establish standards for “the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the Administrator’s] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Once the Administrator makes such a positive “endangerment finding,” the Act requires her to issue emission standards taking into account specified technological and cost considerations. *Id.* § 7521(a)(1)&(2).

C. The PSD Program.

The primary requirement of the prevention of significant deterioration (“PSD”) program, adopted as part of the 1977 amendments to the Act, is a permitting requirement for stationary sources. *See* Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492. Congress described the overall purpose of the PSD program as, *inter alia*, “to protect public health and welfare from any actual or potential adverse effect which in the Administrator’s judgment may reasonably be anticipate[d] to occur from air pollution . . . notwithstanding attainment and maintenance of all national ambient air quality standards.” 42 U.S.C. § 7470(1).

Generally speaking, under section 165(a) of the Act, 42 U.S.C. § 7475(a), a “major emitting facility” may not be constructed or modified without first obtaining a pre-construction permit under the PSD program. A modification of an existing major emitting facility is defined by statute as a physical change or change in the method of operation that results in an increase in the amount of any air pollutant. 42 U.S.C. § 7479(2)(C); 42 U.S.C. § 7411(a)(4). Consistent with these statutory provisions, under longstanding EPA regulations, the PSD permit requirement can be triggered by, inter alia, emissions of the specified quantities of “[a]ny pollutant that otherwise is subject to regulation under the Act.” 40 C.F.R. § 52.21(a)(1)-(2), (b)(50)(d)(iv); see also id. § 51.166(a)(1)-(2), (49)(iv).

D. The Title V Operating Permit Program.

In 1990, Congress enacted Title V of the Act, 42 U.S.C. §§ 7661-7661f, which establishes an operating permit program covering stationary sources of air pollution. Under this “Title V” permit program, all CAA requirements applicable to a particular source are contained in a comprehensive permit. The permit requirement applies to, among other sources, any “major source” within the meaning of section 501(2) of the Act, 42 U.S.C. § 7661(2).

II. THE ENDANGERMENT FINDING

As noted above, following the Supreme Court's 2007 decision in Massachusetts, EPA was directed to reconsider its denial of an administrative petition seeking regulation of greenhouse gas emissions from motor vehicles. In December 2009, EPA issued the Endangerment Finding. In that Finding, the Administrator defined the relevant Section 202 "air pollution" as the atmospheric mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydroflourocarbons (HFCs), perflourocarbons (PFCs), and sulfur hexafluoride (SF₆). 74 Fed. Reg. at 66,497, 66,516-22. The Administrator further found that this air pollution may "reasonably be anticipated both to endanger public health and to endanger public welfare," and that greenhouse gas emissions from new motor vehicles and engines contribute to this air pollution. 74 Fed. Reg. at 66,496-97, 66,523-36. EPA then issued greenhouse gas emissions standards for new light-duty motor vehicles through the Vehicle Rule. 75 Fed. Reg. 25,324 (May 7, 2010). Finally, in August 2010, EPA denied petitions seeking reconsideration of the Endangerment Finding in the Reconsideration Denial. See 75 Fed. Reg. 49,556 (Aug. 13, 2010).

Along with the Endangerment Finding, EPA issued a 210-page TSD detailing the Agency's summary of the state of the science and relevant emissions data. A draft TSD had been released as part of the lengthy Advance Notice of

Proposed Rulemaking (“ANPR”) published on July 30, 2008 (73 Fed. Reg. 44,354), and was later revised and updated to reflect more recent science assessments and following comments received during the 120-day public comment period on the ANPR. 74 Fed. Reg. at 66,510. The revised TSD published with the proposed Endangerment Finding in April, 2009 was again updated in response to public comments received during the 60-day comment period. Id.; EPA HQ OAR 2009-0171-11639 (JA 3547-55). EPA also published an 11-volume response to comments with the final Endangerment Finding.¹

A. The Administrator’s Approach To Evaluating The Evidence.

The Administrator relied on thorough and peer-reviewed assessments of climate change science prepared by the Intergovernmental Panel on Climate Change (“IPCC”), the United States Global Change Research Program (“USGCRP”), and the National Research Council of the National Academies (“NRC”) as the primary scientific and technical basis for the Endangerment Finding. EPA evaluated these assessments in several ways: by reviewing the process employed to develop each assessment, by reviewing their substantive content in light of in-house expertise, and by taking into consideration the depth of scientific consensus represented in the assessments. Response to Petitions to

¹ Excerpts from the TSD and RTC are set forth in the Joint Appendix. The complete TSD, RTC, and other related documents are available at <http://www.epa.gov/climatechange/endangerment.html> (last visited Nov. 10, 2011).

Reconsider Endangerment Finding (“RTP”) 3-2 (JA 4833-37); see also 74 Fed. Reg. at 66,510-12; 75 Fed. Reg. at 49,581-82. EPA also took comment on using these assessments as the primary scientific and technical basis for its determination, and affirmed its view after considering comments. 74 Fed. Reg. at 66,510-12.

The Administrator concluded that the scientific assessments of the IPCC, the USGCRP, and the NRC were “the best reference materials for determining the general state of knowledge on the scientific and technical issues before the agency in making an endangerment decision.” 74 Fed. Reg. at 66,511. These assessments comprehensively address the scientific issues the Administrator had to examine, providing her both data and information on a wide range of issues pertinent to the Endangerment Finding. 74 Fed. Reg. at 66,510. They are recent, and represent the current state of knowledge on key elements of the endangerment analysis. 74 Fed. Reg. at 66,511. They are also comprehensive, evaluating and synthesizing thousands of individual studies to convey the consensus of the body of scientific literature. Id.; see also RTC 1-2 (JA 3561-63) (assessments “look at the range of the scientific literature without ‘cherry-picking’”); RTC 1-14 (JA 3568-74) (discussing IPCC assessment process). These assessments have been rigorously reviewed not only by the expert community, but also by United States government agencies and scientists; indeed, EPA itself took an active part in reviewing and

approving these assessments. 74 Fed. Reg. at 66,511. The assessments therefore “essentially represent the U.S. government’s view of the state of knowledge on greenhouse gases and climate change.” Id.

B. Scientific Support For The Endangerment Finding.

As we now summarize, EPA concluded that the “air pollution” consisting of the six globally well-mixed greenhouse gases may reasonably be anticipated to endanger public health and welfare.

Greenhouse gases cause warming: Greenhouse gases in the atmosphere trap heat on Earth that would otherwise escape into space. 74 Fed. Reg. at 66,517. These gases are part of the natural greenhouse effect that keeps the planet habitable. As greenhouse gases are added to the atmosphere, the natural greenhouse effect is intensified and the planet warms. 74 Fed. Reg. at 66,499.

Levels of greenhouse gases are increasing in the atmosphere due to human activity: Evidence shows that atmospheric greenhouse gas concentrations “are at elevated and essentially unprecedented levels” as the result of human activities. 74 Fed. Reg. at 66,517. Since pre-industrial times, carbon dioxide concentrations have increased by 38%; methane levels by 149%; and nitrous oxide by 23%. Id. Data reaching farther back in time show current atmospheric concentrations of CO₂ and methane are above the natural range compared to at least the last 650,000 years. Id.

The climate is warming: Datasets developed by the National Oceanic and Atmospheric Administration and the National Aeronautics and Space Administration of the United States and the United Kingdom's Hadley Center all show a global average warming trend over the last century, with the greatest warming occurring over the last 30 years. 74 Fed. Reg. at 66,517. All three datasets showed that 8 of the 10 warmest years on record had occurred since 2001, and that the 20 warmest years on record had all occurred since 1981. Id. Global mean surface temperature was higher during the last few decades of the 20th century than during any comparable period in the preceding four centuries. Id. Observational evidence around the globe shows that warming is occurring – e.g., there is widespread melting of snow and ice; global average sea level is rising; and widespread changes in extreme temperatures have been observed in all world regions in the last 50 years. Id. at 66,517-18.

Recent warming has been attributed to the increase in greenhouse gases: EPA's conclusion that anthropogenic greenhouse gas emissions very likely caused most of the past half-century of warming is based on three lines of evidence:

The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. The second line of evidence arises from indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual. The third line of

evidence arises from the use of computer-based climate models to simulate the likely patterns of response to the climate system to different forcing mechanisms (both natural and anthropogenic).

74 Fed. Reg. at 66,518. The first two lines of evidence include the information discussed above. In addition, the past half century of warming has occurred at a time when natural forces such as solar activity and volcanoes would likely have produced *cooling*, not warming. *Id.* The vertical pattern of observed warming – with warming in the bottommost layer of the atmosphere and cooling immediately above – is consistent with warming caused by greenhouse gases, and inconsistent with other possible causes. 75 Fed. Reg. at 49,566; RTC 3-35 (JA 3840-42). The third line of evidence is that multiple analyses using various climate models show that the observed warming can only be reproduced by incorporating *both* natural and man-made influences on the climate. 74 Fed. Reg. at 66,518; see also 75 Fed. Reg. at 49,565-67.

Warming of the climate threatens human health and welfare: EPA comprehensively considered “both observed and projected effects of greenhouse gases in the atmosphere, their effect on climate, and the public health and welfare risks and impacts associated with such climate change.”² 74 Fed. Reg. at 66,497.

² Because the vast majority of impacts are related to climate change, the general public (and this brief) uses the term “climate change” as short-hand for all such impacts. Other relevant impacts associated with elevated concentrations of CO₂ include ocean acidification and potential growth stimulus to plants. 74 Fed. Reg. at 66,532, 66,534.

The Administrator used her best judgment, guided by the statute and based on the science, to weigh potential risks and benefits and to determine whether, on balance, those effects may reasonably be anticipated to endanger public health or welfare.

Id.

Regarding public health, the Administrator evaluated “the risks associated with changes in air quality, increases in temperatures, changes in extreme weather events, increases in food-and water-borne pathogens, and changes in aeroallergens” associated with climate change. 74 Fed. Reg. at 66,497, 66,524-31. Adverse effects observed and projected to occur include risks of sickness or mortality from reduced air quality, intensified heat waves, and more frequent and intense storms. 74 Fed. Reg. at 66,497-99, 66,516-36. The Administrator also considered that certain populations (e.g., children and the elderly) are more vulnerable to these effects. 74 Fed. Reg. at 66,526. The Administrator ultimately determined that “the public health of current generations is endangered,” and that public health threats will mount over time as greenhouse gases continue to accumulate in the atmosphere. 74 Fed. Reg. at 66,524.

Regarding public welfare, the Administrator likewise considered the “multiple pathways” by which climate change generates risks. 74 Fed. Reg. at 66,531. Adverse public welfare effects observed to date and projected to occur in the future include increased drought, sea level rise, harm to agriculture, and harm

to wildlife and ecosystems. The Administrator found that the balance of evidence in every area considered provides support for an endangerment finding to public welfare, with strong support in the areas of water resources, sea level rise and coastal areas, infrastructure and settlements, ecosystems and wildlife, and adverse effects of extreme weather events. *Id.* at 66,497-99, 66,530-36.

C. The “Cause or Contribute” Finding.

For purposes of the “cause or contribute” finding, EPA defined the relevant “air pollutant” as “the aggregate group of the same six long-lived and directly-emitted greenhouse gases [used to define the relevant air pollution],” referred to in the Endangerment Finding as well-mixed greenhouse gases.³ 74 Fed. Reg. at 66,536; *see also id.* at 66,499. These six gases share several common attributes that make their aggregation logical – among other things, all are directly-emitted, long-lived, and have well-understood heating effects. 74 Fed. Reg. at 66,537. After looking at both the share of global and of U.S. aggregate greenhouse gas emissions represented by emissions from Section 202(a) sources, the Administrator found that emissions of well-mixed greenhouse gases from new motor vehicles and

³ The concept of defining an aggregation of compounds as a single “air pollutant” is not new. 74 Fed. Reg. at 66,540-41; *infra* at 80-81.

new motor vehicle engines “contribute” to the “air pollution” for which the endangerment finding was made.⁴ 74 Fed. Reg. at 66,499, 66,537-45.

D. The Denial of Reconsideration.

EPA received ten voluminous petitions seeking administrative reconsideration of the Endangerment Finding. See 42 U.S.C. § 7607(d)(7)(B). These petitions raised two primary categories of objections regarding climate science. They challenged the validity of certain temperature data, arguing that it had been distorted, concealed, or manipulated by certain climate scientists. 75 Fed. Reg. at 49,570-76. The petitions also alleged that new information demonstrated mistakes and biases in analyses conducted by, or for, the IPCC, which they claimed undermined EPA’s use of those analyses. Id. at 49,569-83.⁵ These Petitioners’ arguments focused on email communications involving scientists at the Climate Research Unit (“CRU”) of the University of East Anglia in the United Kingdom (the so-called “climategate” emails). See id. at 49,563.

After a comprehensive review, EPA concluded that the arguments and evidence in these petitions were inadequate, generally unscientific, and failed to

⁴ For example, the Administrator noted that the amount of annual greenhouse gas emissions from Section 202(a) sources in the United States ranked behind only greenhouse gas emissions from China, the United States as a whole, Russia, and India. 74 Fed. Reg. at 66,539.

⁵ The petitions for reconsideration also raised legal objections that EPA rejected as untimely and not of central relevance to the Endangerment Finding. 75 Fed. Reg. at 49,584-94.

show that the science supporting the Endangerment Finding was flawed, misinterpreted, or inappropriately applied. 75 Fed. Reg. at 49,557. As EPA explained, its understanding of how manmade emissions contribute to climate change, and of the risks and impacts of such change, “has been decades in the making,” and has only become clearer over time – and Petitioners offered nothing to alter or undermine that understanding. Id. In general, EPA found that Petitioners relied on exaggerated, isolated, out-of-context evidence that was insufficient to challenge “the voluminous and well-documented body of science that is the technical foundation of the Administrator’s Endangerment Finding.” Id.; see also id. at 49,570.

EPA’s conclusion was consistent with those reached by multiple independent bodies examining the CRU emails. Id. at 49,557. Although these inquiries concluded that some of the CRU’s procedures could be improved, they – like EPA – ultimately found “no evidence of scientific misconduct or intentional data manipulation on the part of the climate researchers associated with the CRU e-mails.” Id. at 49,558.

EPA thus denied the petitions because the Petitioners failed to provide substantial support for the argument that the Endangerment Finding should be revised, and therefore their objections were not of “central relevance” to that Finding. 75 Fed. Reg. at 49,558, 49,583-84; see generally id. at 49,563-84,

49,584-94 (detailing EPA's response to scientific, legal, and policy claims). EPA also concluded that, in many cases, the reconsideration Petitioners had failed to demonstrate that it would have been impracticable to raise their comments during the public comment period. Id.⁶

STANDARD OF REVIEW

This case is subject to the standard of review set forth in CAA Section 307(d)(9), 42 U.S.C. § 7607(d)(9),⁷ under which the Court asks whether the challenged action was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” Id. This standard of review “is a narrow one,” and the Court is not “to substitute its judgment for that of the agency.” Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). The pertinent question is simply “whether the [agency's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.”

⁶ The three-volume RTP provides a more detailed response to the petitions. Pertinent excerpts are included in the Joint Appendix. A complete copy of the RTP, as well as the administrative petitions and other related materials, is available at <http://www.epa.gov/climatechange/endangerment/petitions.html> (last visited Nov. 10, 2011).

⁷ The requirements of CAA Section 307(d) apply to a set of enumerated agency actions and any other EPA action so designated by the Agency. See 42 U.S.C. § 7607(d)(1). Here, EPA noted the application of Section 307(d) in both the proposed and final Endangerment Finding. See 74 Fed. Reg. at 18,886, 18,889 n.4 (Apr. 24, 2009) (proposal); 74 Fed. Reg. at 66,504-05 (final). As discussed herein, Petitioners challenge some aspects of the application of Section 307(d)(8), 42 U.S.C. § 7607(d)(8), to their claims regarding review by the Science Advisory Board, but they do not otherwise challenge the application of Section 307(d) to the Endangerment Finding.

Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43-44 (1983).

Particular deference is given to an agency with regard to technical matters within its area of expertise.⁸ Although Petitioners acknowledge this general rule, they wrongly contend that EPA forfeited this deference by using third-party scientific assessments as the primary scientific and technical basis for the Endangerment Finding.⁹ See Ind. Br. 42-43. Petitioners base this argument on Achernar Broad. Co. v. FCC, 62 F.3d 1441, 1447 (D.C. Cir. 1995), but Achernar concerned an agency's failure to consider options other than a complete denial of the license application at issue. There is nothing in the opinion to suggest that the Court withheld deference from the agency based on the agency's failure to exercise its own technical expertise. Id. at 1447-48.¹⁰ By contrast, in this case, there can be no serious contention that EPA failed to consider any aspect of the complex scientific issues underlying the Endangerment Finding. See infra II.B.-D. Petitioners' claims that the record does not support the Endangerment Finding are

⁸ See Baltimore Gas & Elec. Co. v. NRDC, 462 U.S. 87, 103 (1983); see also, e.g., West Virginia v. EPA, 362 F.3d 861, 867-68 (D.C. Cir. 2004).

⁹ Petitioners' claim that EPA did not exercise independent judgment in evaluating the scientific evidence and making the Endangerment Finding, see Ind. Br. 42-43, is addressed infra at 36-38

¹⁰ Petitioners also cite NLRB v. P.I.E. Nationwide, Inc., 923 F.2d 506, 518 n.16 (7th Cir. 1991) for the proposition that an agency "must exercise its touted expertise and explain the rationale and factual basis for its decision." (citation omitted) As discussed in detail below, EPA has done so.

not a basis for denying EPA deference on what is inarguably a highly complex scientific issue on which EPA has expertise. To the contrary, Petitioners' arguments are to be assessed *in light of* that deference.

Judicial deference also extends to an agency's interpretation of a statute it administers. Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837, 842-45 (1984). Under the first step of Chevron, if Congress has "directly spoken to the precise question at issue," that intent must be given effect. 467 U.S. at 842-43. However, under Chevron's second step, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." Id. at 843.

SUMMARY OF ARGUMENT

The Endangerment Finding and the Reconsideration Denial are entirely consistent with the Act and more than amply explained by the Agency and supported by the record. Perhaps because of this, Petitioners' challenges to these actions are mostly indirect and take insufficient account of the comprehensive administrative record and the requirements of the statute. Petitioners argue at length that the legal and technical framework for the Endangerment Finding should be wholly (and unjustifiably) re-engineered to fit Petitioners' notion of rational decisionmaking, all the while ignoring that their preferred approach is completely at odds with clear congressional intent. They also pay scant attention to the actual,

articulated basis for EPA's scientific findings, and instead focus almost entirely on their own inappropriate and unjustified characterization of the record. Such tactics do not meet Petitioners' burden of proving that the Endangerment Finding and Reconsideration Denial are arbitrary, capricious, or contrary to law.

In the first part of this brief, we explain why the basic legal framework EPA used to analyze the endangerment question is entirely consistent with the statute, its legislative history, and applicable judicial guidance. The present version of Section 202(a)(1), 42 U.S.C. § 7521(a)(1), was drafted specifically to endorse this Court's en banc decision in Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976), which articulated an approach to "endangerment" that focuses on prevention of adverse impacts to public health and welfare before they occur and, to that end, explicitly eliminated just the sort of empirical hurdles Petitioners advocate here.

Next, we explain in detail why the administrative record offers overwhelming support for the Agency's conclusion that air pollution, in the form of atmospheric concentrations of six greenhouse gases, may be reasonably anticipated to endanger public health and welfare. In fact, most of the key components of EPA's scientific analysis are essentially undisputed. Although Petitioners mount numerous scattershot challenges to the science and data on which EPA relied, these amount to little more than mistaken or essentially irrelevant characterizations of isolated parts of an abundant and convincing

technical record. The petitions for administrative reconsideration of the Endangerment Finding were based entirely on arguments that did not raise issues of “central relevance” to the Endangerment Finding within the meaning of CAA Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), and that in many cases could have been raised during the comment period. Accordingly, EPA also acted reasonably in denying those petitions.

Neither is there merit to Petitioners’ contention that EPA erred in classifying the atmospheric mix of six long-lived, heat-trapping gases as the “air pollutant” that was the focus of the Agency’s contribution analysis. Both the statute and EPA’s regulatory precedent support such an approach. Furthermore, these gases, collectively, are the primary driver of the climate effects that are the focus of the Endangerment Finding and share common, relevant attributes that make their aggregation as a single air pollutant sensible. The air pollutant is properly defined as the same mix of gases as the air pollution.

It was more than reasonable for EPA to reject the suggestion that judging the presence or absence of an “endangerment” required the Agency to quantify safe and unsafe levels of risk from climate change and to gauge the extent to which subsequent emission standards might ameliorate these risks. EPA also reasonably deemed irrelevant to its endangerment analysis a variety of factors that are not mentioned in section 202(a)(1) and that do not directly relate to a determination of

the effects of the air pollution at issue. For example, Petitioners argue at length that EPA should have considered the impacts that eventual regulation of greenhouse gas emissions from stationary sources might have, but stationary source issues are nowhere even mentioned in Section 202(a)(1). EPA also correctly determined that consideration of other factors stressed by Petitioners – such as the alleged societal benefits of pollution-causing activities and the extent to which Americans might adapt to or mitigate adverse impacts to public health and welfare – is not required by Section 202(a)(1) and would be antithetical to congressional goals and intent.

Finally, Petitioners' claims concerning the alleged necessity of review by the SAB should be denied on waiver grounds and because they are meritless, in any event.

ARGUMENT

I. THE ENDANGERMENT FINDING IS PREMISED ON EPA'S SOUND AND APPROPRIATE CONSTRUCTION OF THE CLEAN AIR ACT

As discussed above, Section 202 of the Act, 42 U.S.C. § 7521, establishes a two-step path to regulation of emissions from new motor vehicles and engines. In the first step, pursuant to Section 202(a)(1), EPA is to determine whether, in the Administrator's "judgment," emissions of "any air pollutant" from such sources "cause or contribute" to "air pollution which may reasonably be anticipated to

endanger public health or welfare.” 42 U.S.C. § 7521(a)(1). This is commonly referred to as an “endangerment” finding. If the Administrator makes a positive endangerment finding, EPA is directed to issue standards applicable to those emissions, id., taking into account the cost and technological factors set forth separately in subsection 202(a)(2), 42 U.S.C. § 7521(a)(2).

In this case, EPA made the Endangerment Finding in a separate proceeding from the emission standards (i.e., the Vehicle Rule). While this is a slightly different procedure than EPA has most often used in the past,¹¹ there is no substantive difference, since EPA customarily sets forth its “endangerment” analysis separately from its analysis of the related regulatory standards even where both are combined into one Federal Register notice.¹²

While Petitioners do not contest EPA’s procedural discretion to make a separate endangerment finding, see Ind. Br. 13, they argue that EPA cannot make an endangerment finding unless it quantifies the degree of risk posed by the identified endangerment and finds that corresponding motor vehicle standards will

¹¹ But see, e.g., 65 Fed. Reg. 76,790 (Dec. 7, 2000) (stand-alone endangerment finding for certain types of spark-ignition engines).

¹² See, e.g., 69 Fed. Reg. 38,958, 38,962-63 (June 29, 2004); 59 Fed. Reg. 31,306, 31,318 (June 17, 1994) (regulation of certain emissions from nonroad engines pursuant to CAA Section 213(a)(4), 42 U.S.C. § 7513(a)(4) (1994) (final rules); 68 Fed. Reg. 28,328, 28,336-37 (May 23, 2003); 58 Fed. Reg. 28,809, 28,845-46 (May 17, 1993) (nonroad engines proposed rules); see also, e.g., 66 Fed. Reg. 5002, 5007-08 (Jan. 18, 2001) (standards for highway heavy duty diesel engines and diesel sulfur fuel - final); 65 Fed. Reg. 35,430, 35,435-46 (June 2, 2000) (proposal).

substantially address that risk. Indeed, Petitioners even contend that EPA should have integrated certain aspects of *stationary* source regulation of greenhouse gas emissions into its analysis for the Endangerment Finding. As we discuss in Parts V and VI of this brief, *infra*, none of Petitioners' arguments on these points is correct.¹³

Instead, as we discuss in this section, EPA properly construed the statute (in light of its text, structure, legislative history, and applicable precedent) as requiring the Endangerment Finding to be focused solely on a precautionary, science-based judgment by the Administrator as to whether or not the motor vehicle emissions in question cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. EPA's approach to the endangerment question should be upheld as, at the very least, "reasonable" under Chevron, 467 U.S. at 844.

A. The Endangerment Finding Is Properly Focused Solely on the Science Pertaining to the Public Health and Welfare Impacts of the Air Pollution Under Consideration.

As the Supreme Court made clear in Massachusetts, the endangerment and contribution criteria enumerated in Section 202(a)(1) limit the Agency to a science-

¹³ Some of Petitioners' challenges appear to relate, at least in part, to the Vehicle Rule, which is not before the Court in this case. *See, e.g.*, Ind. Br. 13, 24-28. EPA's record for the Vehicle Rule fully addresses all factors properly before the agency in adopting emissions standards, and any objections to the Vehicle Rule are properly raised in the litigation on that rule, not in this action.

based judgment as to whether greenhouse gas concentrations in the atmosphere constitute “air pollution” that may reasonably be anticipated to endanger public health or welfare, and whether vehicle emissions cause or contribute to that air pollution. 74 Fed. Reg. at 66,507 (citing Massachusetts, 549 U.S. at 532-34). The cost and technology considerations relevant to promulgation of subsequent mobile source emission standards are separately enumerated in the standard-setting provisions of Section 202(a)(2) of the Act, and it is solely in that context that Congress intended EPA to consider cost of compliance and the period necessary to permit the development and application of the requisite technology. See 74 Fed. Reg. at 66,508; see also Massachusetts, 549 U.S. at 533-34. Nor are issues regarding stationary sources, which are not mentioned in Section 202(a)(1) or (2) at all, related to “the science of greenhouse gases or climate change, or the impacts of climate change on public health or welfare.” 74 Fed. Reg. at 66,515; see also id. at 66,500-01 (“EPA is limited to consideration of science when undertaking an endangerment finding . . .”). As the Supreme Court stated “EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.” 549 U.S. at 533; see also id. at 533–34 (rejecting certain by EPA policy arguments, noting that those arguments “have nothing to do with whether greenhouse gas emissions contribute

to climate change. Still less do they amount to a reasoned justification for declining to form *a scientific judgment*”) (emphasis added). As EPA reasonably concluded, the Administrator “must base her decision about endangerment on the science, and not on policy considerations about the repercussions or impact of such a finding.” 74 Fed. Reg. at 66,515.

B. The Legislative History of Section 202(a)(1) Confirms That “Endangerment” Is a Protective, Science-Based Judgment Focused Solely on the Potential Threat to Public Health and Welfare From Air Pollution.

Pertinent legislative history also confirms that an endangerment finding under Section 202(a)(1) was intended by Congress to be a protective, science-based judgment (not a fact-finding exercise) that is focused solely on potential threats to public health and welfare posed by air pollution.

The present text of the endangerment provision in Section 202(a)(1) was added by Congress in 1977 as an affirmation of Ethyl Corp v. EPA, 541 F.2d 1 (D.C. Cir. 1976) (en banc), which upheld EPA regulations restricting the amount of lead in gasoline. Before the Court in Ethyl was a pre-1977 fuel provision in Section 211(c)(1)(A), 42 U.S.C. § 1857f-6c(1)(A) (1976), which provided that EPA could regulate fuel additives whose emissions “will endanger the public health or welfare.” See Ethyl, 541 F.2d at 7. After a thorough analysis, this Court concluded that even this older “will endanger” standard “is precautionary in nature

and does not require proof of actual harm before regulation is appropriate.” Id. at 17.

The Court in Ethyl opined that “a determination of endangerment to public health is necessarily a question of policy that is to be based on an assessment of risks and that should not be bound by either the procedural or the substantive rigor proper for questions of fact.” Id. at 24. Such an approach is particularly important in the environmental context, where an elusive search for scientific “certainty” will “often allow for only reactive, not preventive, regulation.” Id. at 25.

The Ethyl court specifically distinguished the “will endanger the public health or welfare” provision from another CAA provision which required EPA to make a finding as to whether the fuel additive would impair the performance of emission control devices. See Ethyl, 541 F.2d at 23-24. The Court explained that those other provisions call for a “peculiarly factual finding” that is “inherently unlike” the endangerment standard: “[d]anger is a risk, and so must be decided by assessment of risks as well as by proof of facts.” Id. at 24. The Court noted that in 1970, Congress had expressly considered, but rejected, a House bill that would have established fact-based findings that the Administrator would have had to make in conjunction with an endangerment finding. Id. at 21-23. Further, this aspect of the en banc Court’s decision in Ethyl was vigorously criticized in the dissent, which would instead have imputed a fact-finding requirement into the

“will endanger” determination. See Ethyl, 541 F.2d at 94-97 (Wilkey, J., dissenting). Thus, this Court clearly, knowingly, and expressly rejected the argument that detailed fact-finding must accompany a “judgment” of endangerment under the Act.

When Congress amended the Act in 1977 to ratify the approach taken in Ethyl, it explained its goals in remarkable detail. See H.R. Rep. No. 95-294, at 43-51, reprinted in 1977 U.S.C.C.A.N. 1077, 1121-29.¹⁴ Among other things, Congress stressed that it intended to emphasize “the preventative or precautionary nature of the act” and “the predominant value of protection of public health.” Id. at 49, 1977 U.S.C.C.A.N. at 1127. Further, Congress stressed that it “authorize[d] the Administrator to weigh risks and make reasonable projections of future trends” and directed the Administrator “[t]o assure that the health of susceptible individuals, as well as healthy adults, will be encompassed in the term ‘public health’” Id. at 49-50, 1977 U.S.C.C.A.N. at 1127-28.

Congress also recognized that in light of the inherent “uncertainties and limitations in the data which will be available to the Administrator,” courts should conduct “adequate judicial review of the reasonableness of the Administrator’s

¹⁴ These revisions to the endangerment provisions in the Act were part of the House bill and were concurred in by the Senate. See 1977 U.S.C.C.A.N. 1502, 1564. The House Report was cited and discussed in both the D.C. Circuit and Supreme Court decisions in Massachusetts v. EPA. See Massachusetts v. EPA, 549 U.S. at 506 n.7; Massachusetts v. EPA, 415 F.3d 50, 76-77 (D.C. Cir. 2005) (Tatel, J., dissenting), reversed, 549 U.S. 497 (2007).

judgment in assessing risks” but should not “attempt[] to act ‘as the equivalent of a combined Ph. D. in chemistry, biology, and statistics’” Id. at 50, 1977

U.S.C.C.A.N. at 1128. Congress therefore changed the former “will endanger” criterion to the present “may reasonably be anticipated to endanger,” and expressly characterized the finding as an exercise of “judgment” by the Administrator. Id. at 51, 1977 U.S.C.C.A.N. at 1129. Congress explained that while the Administrator must exercise her judgment reasonably, and cannot base an endangerment finding on “‘crystal ball’ speculation,” she is authorized to make “comparative assessment[s] of risks” and “projections of future possibilities” based on “extrapolat[i]ons] from limited data.” Id. at 50-51, 1977 U.S.C.C.A.N. at 1128-29. In this regard, the Committee noted that it had considered and “expressly rejected” an amendment that would have deleted the phrase “in his judgment” and replaced it with a provision requiring factual findings instead. Id. at 51, 1977 U.S.C.C.A.N. at 1129.

A number of pertinent conclusions are apparent from the foregoing. First, Congress’ overwhelming focus in crafting the present language of the endangerment provision in Section 202(a)(1) was the protection of the public from risks to health and welfare from air pollution. Second, Congress recognized that the Administrator must be able to take action even with incomplete and uncertain data if she is going to be able to effectuate the goal of acting to prevent harm

before it occurs.¹⁵ Third, while Congress recognized that the Administrator must take reasonable account of available evidence, it also specifically intended an endangerment finding to be an exercise of judgment, not a factual finding. Fourth, Congress intended the Administrator's duty to protect public health to be quite broad, including, for example, the obligation to protect the health even of especially "sensitive" populations.

In sum, for all the foregoing reasons, EPA properly construed the Act as focusing an endangerment finding under Section 202(a)(1) solely on two questions: (1) whether "air pollution" (in this case atmospheric concentrations of six greenhouse gases) may reasonably be anticipated to endanger public health or welfare; and (2) whether motor vehicle emissions cause or contribute to this air pollution. As we will discuss in the following sections, EPA had overwhelming evidence in the record to support its judgment that both of these questions should be answered in the affirmative here, and ample legal basis to reject the alternative approaches to the endangerment inquiry advocated by Petitioners.

¹⁵ As EPA explained, see 74 Fed. Reg. at 66,508, Congress' discussion of "prevention" of harm was meant to rebut the suggestion that EPA should be precluded from making an endangerment finding before actual harm had occurred, and had nothing to do with any assessment of possible emission controls. Id.; see also H.R. Rep. No. 95-294, at 48-49, 1977 U.S.C.C.A.N. at 1126-27.

II. THE RECORD SUPPORTS THE ADMINISTRATOR'S FINDING THAT ELEVATED CONCENTRATIONS OF GREENHOUSE GASES ARE REASONABLY ANTICIPATED TO ENDANGER PUBLIC HEALTH AND WELFARE

The Endangerment Finding is based on an extensive, intensely scrutinized and peer-reviewed scientific record. See supra at 12-14; 74 Fed. Reg. at 66,497, 66,510-12. Much of the basic scientific information underlying the Administrator's finding is, moreover, essentially undisputed. That greenhouse gases trap heat; that trapped heat in turn warms the climate; that levels of greenhouse gases in the atmosphere are increasing; that this increase is caused by human activity; and that greenhouse gas levels in the atmosphere are projected to continue rising for the foreseeable future – none of this is seriously disputed.

Petitioners are unable to rebut these well-documented conclusions, and thus launch unfocused and unjustified attacks on isolated elements of the administrative record. Given EPA's comprehensive review of a robust scientific record, EPA's imperative to act to prevent harm even in the face of uncertainty, and the high degree of deference due EPA on matters of scientific interpretation within the Agency's core area of expertise, Petitioners' attacks fail.¹⁶

¹⁶ Petitioners suggest that EPA rushed the Endangerment Finding for policy reasons. See Ind. Br. 5-6, 33; see also Kan. Br. 7. EPA explained, however, that given the ten years since the original petition, it had "a responsibility to respond to the Supreme Court's decision and to fulfill its obligation under current law," and that there was "good reason to act now given the urgency of the threat of climate change and the compelling scientific evidence." 74 Fed. Reg. 66,500-01.

A. The Administrator Relied On Well-Founded Science to Make Her Judgment.

The Administrator properly relied on the thorough assessments prepared by the IPCC, the NRC, and the USGCRP as the primary scientific and technical basis for the Endangerment Finding. 74 Fed. Reg. at 66,510-12; 75 Fed. Reg. at 49,581-82. In EPA's view, these assessments were, and remain, the best source materials for determining the state of science with regard to climate change.¹⁷ 74 Fed. Reg. at 66,511; supra at 13-14. The assessments synthesize an extensive body of scientific studies, and ultimately demonstrate the broad scientific consensus on how greenhouse gases affect the climate, as well as the impact of present and projected future climate changes on human health, society, and the environment.¹⁸ 74 Fed. Reg. 66, 511. Both EPA's summary of the science and its rationale for relying primarily on these assessment reports underwent notice and comment. 74

¹⁷ A subsequent 2010 National Research Council assessment confirms the robustness of these analyses. This study is in the record supporting the denial of reconsideration. See National Research Council (NRC) (2010), *Advancing the Science of Climate Change*, National Academy Press, Washington, D.C., EPA HQ OAR-2009-0171-12091; 75 Fed. Reg. at 49,558.

¹⁸ Contrary to Petitioners' contention, EPA was not required to place the "scientific data underlying" the hundreds to thousands of studies summarized in these assessments in the docket. See Va. Br. 30; see also Kan. Br. 26-27. This Court has flatly rejected the same argument in prior cases under the Act. See *Coal. of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 622-23 (D.C. Cir. 2010); *Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002) ("requiring agencies to obtain and publicize the data underlying all studies on which they rely 'would be impractical and unnecessary'") (citation omitted).

Fed. Reg. at 18,894. EPA's conclusion that it "has no reason to believe that the assessment reports do not represent the best source material" for an endangerment finding, and that putting the existing assessments aside and attempting to develop a new assessment would not "provide any better basis for making the endangerment decision," 74 Fed. Reg. at 66,511, was thus reached only after a careful and thorough review.

Although the scientific assessments reviewed by EPA provided the principal source materials for the Endangerment Finding, the Administrator exercised her own judgment in making that Finding. See, e.g., 74 Fed. Reg. at 66,497 (Administrator determined that scientific evidence compellingly supports an endangerment finding; assessments by USGCRP, IPCC, and others "serve as the primary scientific basis supporting the Administrator's endangerment finding"); see generally id. at 66,497-99; RTP 3-2 (JA 4833-37). This Court has stated that an agency does not improperly delegate its authority or judgment merely by using work performed by outside parties as the factual basis for its decision making. See U.S. Telecom Ass'n v. FCC, 359 F.3d 554, 567-68 (D.C. Cir. 2004); United Steelworkers of Am. v. Marshall, 647 F.2d 1189, 1216-17 (D.C. Cir. 1980).¹⁹

¹⁹ In U.S. Telecomm Ass'n, the D.C. Circuit concluded that an agency had acted unlawfully by expressly delegating its decision-making authority to state commissions. 359 F.3d at 565; see Va. Br. 29. Petitioners do not allege that EPA expressly delegated its Section 202(a) authority, nor did EPA do so.

In United Steelworkers, the Court rejected an argument that an agency had improperly relied on outside consultants where the petitioning party “[could not] buttress its general allegation of excessive reliance with any specific proof that the Assistant Secretary failed to confront personally the essential evidence and arguments” at issue. 647 F.2d at 1217. As the Court elaborated, “unsupported allegation[s]” could not “overcome the presumption that agency officials and those who assist them have acted properly.” Id. Petitioners’ conclusory assertion that the Administrator did not exercise her own judgment (see, e.g. Ind. Br. 33, Va. Br. 31) is both “unsupported” by “specific proof” and directly contradicted by the administrative record. See generally Va. Br. 23, 27-30, 35; Ind. Br. 7-8, 33, 42; see also Amicus Brief of the State of Kansas (“Kan. Br.”) 1-2.²⁰

Neither can Petitioners overcome the overwhelming weight of the record establishing that the IPCC, NRC, and USGCRP assessments represent a “comprehensive assessment of the scientific literature,” and the best possible scientific foundation for the Endangerment Finding.²¹ See RTC 1-2 (JA 3561-63). Industry Petitioners suggest that the IPCC assessments are unreliable because the

²⁰ Amicus State of Kansas claims that the IPCC “concluded that anthropogenic emissions endanger public health and welfare.” Kan. Br. 2. Kansas’ only support for the proposition that the IPCC reached this conclusion is a general citation to EPA’s Endangerment Finding. See id. n.1. Kansas has thus provided no evidence that the IPCC, as opposed to EPA, was responsible for this conclusion.

²¹ Petitioners’ meritless arguments concerning alleged deficiencies in the IPCC assessment that were raised in the petitions for reconsideration are addressed infra at 73-75.

IPCC was allegedly chartered “for the express purpose of studying human-induced climate change.” Ind. Br. 8. The IPCC, however, unquestionably considered *both* natural climate variability and human factors. See, e.g., TSD at 48 (JA 3396) (IPCC finds that manmade greenhouse gases, increasing solar output, and relative lack of volcanic activity contributed to temperature rise during early part of 20th century).²²

There was, moreover, ample opportunity for public review and comment on these assessments and EPA’s use of them. The 2008 ANPR sought comment on the best available science for an endangerment finding, including the IPCC and U.S. Climate Change Science Program (now the USGCRP). 73 Fed. Reg. at 44,425. The assessments also underwent their own peer review and (for the IPCC and the USGCRP) public review process.²³ 74 Fed. Reg. at 66,503. Counting the comment period for the ANPR and for the Endangerment Finding itself, the public had at least 180 days – six months – to comment on the scientific and technical

²² Kansas’ related claim that the IPCC “is not a scientific body but a political body,” Kan. Br. 12, is backed by nothing more than Kansas’ own speculations regarding the “expected” motivations of scientists participating in the IPCC.

²³ Petitioners claim that the public did not have an opportunity to comment on these assessments while they were being prepared, Va. Br. 34, but cite nothing to support this statement.

basis for that Finding. Petitioners offer no evidence to support their conclusory claim that this period was inadequate.²⁴ Va. Br. 34-35; see also Kan. Br. 25-26.

Petitioners' claim that EPA improperly delegated its judgment, or improperly relied on thorough scientific assessments, must therefore be rejected.

B. EPA's Conclusions Were Reached After Careful Consideration of Uncertainty.

Where a statute is precautionary, actions under that statute are designed to protect the public health, evidence is "difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge," and the ultimate endangerment determination is "that of an expert administrator," the Court "will not demand rigorous step-by-step proof of cause and effect." Ethyl Corp., 541 F.2d at 27-28; see also Part I.B, supra. This is particularly true in the environmental context, where demanding scientific certainty would "often allow for only reactive, not preventive, regulation." Ethyl, 541 F.2d at 25. Section 202(a) is just such a provision; thus, EPA can act to prevent harm even in the face of uncertainty. See supra at 32-34; Lead Indust. Ass'n v. EPA, 647 F.2d 1130,

²⁴ Petitioners also suggest that EPA merely cited scientific assessments in its response to public comments. Va. Br. 35. Petitioners have, however, failed to offer even a single example of an allegedly inadequate comment response. See id. n.20. EPA naturally cited the assessments that form the primary technical and scientific basis for the Endangerment Finding; however, in doing so, it typically also considered the underlying literature. See, e.g., RTC 3-16 (JA 3823-25); RTC 3-28 (JA 3835-36); RTC 3-33 (JA 3838-39). The record thus contradicts Petitioners' claim that EPA "dismiss[ed]" public comments based on third-party disagreement. Va. Br. 35.

1155 (D.C. Cir. 1980) (requiring EPA to conclusively demonstrate adverse health effects would be inconsistent with precautionary and preventive nature of statute).

Given that Petitioners cannot reasonably claim that EPA is *required* to achieve 100% certainty, they turn to claiming that EPA *chose* to assign a near-100% level of certainty to its conclusions, as well as to the scientific evidence supporting those conclusions (the “high risk” aspect of Petitioners’ high risk/high harm straw man). See, e.g., Ind. Br. 2, 43, 44, 45, 48. In fact, the 90-99% certainty Petitioners reference was used by the Administrator in regards to specific statements, including the Administrator’s conclusion that “[m]ost of the observed increase in global average temperatures since the mid-20th century is very likely [*i.e.*, 90 to 99% likely] due to the observed increase in anthropogenic greenhouse gas concentrations.” 74 Fed. Reg. at 66,518. Petitioners improperly cite this Federal Register passage (which refers to the causes of recent warming, not the risks from climate change) to assert that EPA “is 90-99% certain that human-caused climate change threatens public health and welfare.” Ind. Br. 2.

Petitioners do not offer any citations to support their claims that EPA was uniformly 90-99% certain of all aspects of the Endangerment Finding. See, e.g., Ind. Br. 44 (referring, without citation, to “EPA’s 90-99% confidence risk assessment”); 54-55 (suggesting, without citation, that EPA claimed to be 90-99% certain of particular evidence). Petitioners cannot do so. In fact, the

Administrator's endangerment finding was based on a consideration of "the *totality* of scientific evidence, *some of which was assessed as being virtually certain . . . while other evidence was less certain.*" RTC 1-35 (JA 3593) (emphasis added); see also 74 Fed. Reg. at 66,497 (recognizing variety in nature and potential risks and impacts of human-induced climate change), 66,506 (recognizing "varying degrees of uncertainty" in scientific issues).

The question for the Court is not whether EPA can demonstrate that the Endangerment Finding and the evidence supporting it are beyond questioning, or that every piece of evidence points only in support of that Finding.²⁵ It is, rather, whether EPA took all relevant record material into account in a "rational manner;" if it did so, the Court will not overrule EPA's expert judgment. See Am. Petroleum Inst. v. Costle, 665 F.2d 1176, 1187 (D.C. Cir. 1981). As discussed in

²⁵ Petitioners cite New York v. EPA, 413 F.3d 3, 31 (D.C. Cir. 2005) for the proposition that an agency "must offer [an] adequate rationale where 'evidence in the record may also support other conclusions.'" Ind. Br. 46. New York actually states that "the fact that the evidence in the record may also support other conclusions" *did not prevent the Court from concluding that EPA's decisions were rational and supported by the record*. 413 F.3d at 31 (citations and internal quotations omitted). To the extent Petitioners suggest the existence of conflicting or uncertain evidence calls EPA's conclusions into question, their argument is inconsistent with well-established precedent. See, e.g., Lead Indust., 647 F.2d at 1160 ("disagreement among the experts is inevitable when the issues involved are at the 'very frontiers of scientific knowledge,' and such disagreement does not preclude us from finding that the Administrator's decisions are adequately supported by the evidence in the record").

the following sections, EPA did so, and the robust administrative record fully supports the Endangerment Finding.

C. The Record Supports Attribution of Most of the Recent Climate Change to Manmade Greenhouse Gas Emissions.

EPA's conclusion that manmade greenhouse gas emissions have very likely caused most of the past half-century of warming is supported by three lines of evidence: a "basic physical understanding" of the impacts of various changes (both natural and manmade) on the climate system, historical estimates that suggest recent changes in global surface temperature are unusual, and computer-based models that simulate the climate's likely response to various forcing mechanisms. 74 Fed. Reg. at 66,518. Petitioners offer nothing that contradicts the overwhelming weight of the administrative record, which demonstrates that each of these three lines of evidence provides significant support for the Endangerment Finding.

1. The Endangerment Finding is consistent with a basic physical understanding of the climate.

Regarding the first line of evidence, Petitioners do not dispute certain basic physical facts about the effect of greenhouse gases. Ind. Br. 45 ("The physical properties of [greenhouse gases] are well understood . . ."); Ind. Br. 47 (greenhouse gases increase amount of heat retained in atmosphere). Instead, they suggest that there is too much uncertainty about *other* factors for EPA to have high confidence

that manmade greenhouse gases are very likely responsible for most recent warming. See Ind. Br. 44-46. Petitioners have, however, dramatically overstated the nature and significance of uncertainties in the record, and have failed to demonstrate that, when the record is viewed as a whole, EPA's conclusion regarding the likely cause of recent warming is arbitrary or capricious.

a. Solar energy.

Solar energy plays a key role in the earth's temperature, and a change in solar energy can lead to either warming or cooling of the climate. The assessment reports found that the warming of the past half-century occurred when natural forcings – including changes in solar activity – would likely have produced cooling, not warming. 74 Fed. Reg. at 66,518; see also, e.g., TSD at 50 (JA 3398) (natural external forcing factors would likely have produced cooling rather than warming during past half century). In addition, the pattern of recent warming in the atmosphere is consistent with warming from increased greenhouse gases, and inconsistent with warming from increased solar radiation. RTC 3-24, 3-25 (JA 3831-33). Petitioners do not contest this evidence.

Instead, Petitioners point to the IPCC's assignment of a low level of scientific understanding to a quantification of the heating effect of solar energy ("radiative forcing") from 1750 to 2005, and assert that this uncertainty is inconsistent with a conclusion that most of the recent warming is very likely

caused by human activity. See Ind. Br. 45. EPA's conclusion, however, concerns warming since the mid-20th century, not over the last 250 years. See IPCC Table 2.12 (JA 4987); TSD at 24 (JA 3372).²⁶ In addition, the IPCC categorized two specific factors related to solar energy as "uncertainties" over this 250-year time period: "relationship between proxy data and total solar irradiance," and "indirect ozone effects." Table 2.11, Ind. Br. C-3. The "proxy data" uncertainty refers to inferring historical solar activity by using *indirect* measures.²⁷ See RTC 3-35 (JA 3840-42). Importantly, for over a quarter of a century, there has been continuous *direct* monitoring of total solar energy – and in the table cited by Petitioners, the IPCC characterizes these direct measurements as a "certainty." Table 2.11, Ind. Br. C-3; RTC 3-24 (JA 3831-32).

EPA's conclusion regarding warming over the last half-century is thus supported by "certain" measurements of solar energy extending over half of that period. In addition, EPA properly accounted for uncertainty regarding historical solar irradiance by acknowledging solar heating effects as a *range*, not as an absolute figure. See TSD at 26 (JA 3374) ("[c]hanges in solar irradiance since

²⁶ EPA referred to warming since 1750 to support the view that greenhouse gases are the largest of the manmade drivers of warming. 74 Fed. Reg. at 66,517, n.19.

²⁷ The "ozone effects" uncertainty refers to changes in the ozone layer due to changes in UV radiation from the sun. The IPCC estimated that accounting for UV variations could lead to a decrease in estimates of solar heating of up to 15%, meaning this uncertainty points to *less* warming attributable to solar activity, not more. IPCC Fourth Assessment Report ("AR4") at 192 (JA 4983).

1750 are estimated to cause a radiative forcing of . . . +.06 to +.30 W/m² [“watts per square meter,” a measure of net heating effect]] (emphasis added); see also RTC 3-24 (JA 3831-32). Even the *maximum* warming effect that could have been caused by solar energy changes over the past 250 years (+.30 W/m²) is only about 13% of the *minimum* +2.38 W/m² warming effect due to the increase in concentrations of the long-lived greenhouse gases during the same time period. See TSD at 24 (JA 3372); RTC 3-24 (JA 3831-32). Petitioners have not demonstrated that uncertainty regarding historical solar irradiance over 250 years undermines EPA’s conclusions regarding the dominant cause of warming over the last half-century.

b. Reflection of solar energy.

Clouds and aerosols in the atmosphere reflect solar radiation, thus limiting solar warming of the climate. See AR4 at 96 (JA 4979). As with their claims regarding solar radiation, Petitioners argue that a low level of scientific understanding regarding the quantification of cloud effects on the climate over the last 250 years undermines EPA’s conclusions regarding the cause of warming over the last half-century. Ind. Br. 45. And as with solar radiation, this uncertainty concerns quantifying effects over a much longer time period than the recent warming addressed in the Endangerment Finding. This uncertainty is again accounted for by expressing these effects as a range; moreover, heating caused by

increased greenhouse gases is shown to outweigh any potential cloud effects. See TSD at 23-24 and Figure 4.1 (JA 3371-72).

c. Climate feedbacks.

There is no dispute that greenhouse gases trap heat that would otherwise escape the planet; the more greenhouse gases in the atmosphere, the more heat is trapped. See supra at 14. “Feedbacks” are processes that can either amplify or dampen the climate system’s initial response to heating – positive feedbacks tend to increase warming, while negative feedbacks tend to reduce warming. TSD at 26 (JA 3374). Contrary to Petitioners’ claims, feedbacks are not “poorly understood,” nor are they mere “assumptions.” Ind. Br. 47; see also id. at 45. They result from scientific principles representing interactions between different elements of the climate system. For example, it is well-established that as air temperature increases, the air can hold more water. Increased water vapor in the atmosphere traps even more heat, thus causing even more warming (a positive feedback). See TSD at 26, 66 (JA 3374, 3414).

There is strong evidence that when all feedbacks are considered together and all uncertainties are accounted for, the net effect is one of increased warming – in other words, negative (cooling) feedbacks are insufficient to cancel positive (warming) feedbacks. See TSD at 66 (JA 3414) (IPCC concludes that climate sensitivity is very likely greater than 2.7°F, which means a net warming effect

from feedbacks). Petitioners' suggestion that the effect of greenhouse gases could somehow be "canceled" by feedbacks, Ind. Br. 45, is thus inconsistent with the administrative record.

Petitioners have, in sum, failed to demonstrate that recognized uncertainties regarding quantifying the precise effects of solar radiation, the reflection of that radiation by clouds and aerosols, and climate feedbacks undermine the Endangerment Finding.²⁸

2. The record supports EPA's conclusions regarding temperature trends.

With respect to the second line of evidence, EPA concluded that historical estimates of past climate changes suggest that global average temperatures over the last half-century are unusual relative to at least the past 1,300 years (although uncertainty is significant prior to 1600). These historical estimates are based in part on various temperature reconstructions that the NRC found yield a generally consistent picture of temperature trends during the preceding millennium. See 74 Fed. Reg. at 66,518; 75 Fed. Reg. at 49,570-71; TSD 31-32 (JA 3379-80).

²⁸ Petitioners point to "the climate's response to external forcings" as a purported fourth factor. Ind. Br. 44, 45. Changes in solar energy, reflectivity, and greenhouse gas concentrations are external forcings; the climate's response is what *follows* from these forcings. See AR4 at 96 (JA 4979). Petitioners' claim that modeled projections of this response are inaccurate, Ind. Br. 45, is addressed infra at 55.

Petitioners do not attack EPA's comparison of recent warming to the past 1300 years, but instead make straw man arguments. Petitioners contend that because EPA did not attribute a warming trend from 1910 to 1945 to greenhouse gas concentrations, EPA cannot so attribute later warming. Ind. Br. 52. EPA did not, however, state that the 1910-1945 warming trend was "not caused" by manmade greenhouse gases. To the contrary, EPA explicitly acknowledged that both greenhouse gas emissions and natural forces contributed to the earlier warming trend:

The IPCC . . . finds that anthropogenic [greenhouse gas] emissions were one of the influences contributing to temperature rise during the early part of the 20th century along with increasing solar output and a relative lack of volcanic activity. During the 1950s and 1960s, when temperature leveled off, increases in aerosols from fossil fuels and other sources are thought to have cooled the planet. For example, the eruption of Mt. Agung in 1963 put large quantities of reflective dust into the atmosphere. The rapid warming since the 1970s has occurred in a period when the increase in [greenhouse gases] has dominated over all other factors.

TSD at 48 (JA 3396) (emphasis added); see also RTC 3-57 (JA 3855-56). Neither, by the same token, did EPA find that recent warming was solely caused by manmade greenhouse gas emissions (see Ind. Br. 52) – only that such emissions explained *most* of the warming in this period. See generally TSD at 47-53 (JA 3395-3401).

Petitioners' claim that there is some inconsistency between EPA's treatment of the 1910-1945 warming period and of post-1960s warming is therefore rebutted

by the administrative record. In neither case did EPA adopt the simple manmade/nature dichotomy that Petitioners posit. In both cases, EPA concluded that observed temperature change was based on both natural *and* manmade factors – what differs is the relative role of natural and manmade forces in different periods.

Petitioners also assert that EPA employed a “double standard” by allegedly “[relying] on a 21-year warming trend from 1977 to 1998” while also maintaining that it is difficult to determine the cause of warming over periods of less than fifty years. Ind. Br. 52-53, 54. Petitioners cite nothing in the record to support their assertion that EPA “relied” on warming during this particular period – nor could they, because EPA did not do so. See 74 Fed. Reg. at 66,518 (discussing observed global warming over past 50 years); RTC 2-45 (JA 3738-39) (warming over the last 50 years almost double that of last 100 years). Nowhere did EPA identify this 21-year span as a “period[] of pronounced temperature increases.” Ind. Br. 52. Petitioners’ purported “double standard” thus arises from the 1977-1998 straw man they set up, not from any time period EPA relied on.²⁹

²⁹ Petitioners claim that there has been no warming since 1998, and that EPA has “dismissed” this purported trend as “meaningless.” Ind. Br. 53, 54. EPA acknowledged that some data sets show no real temperature trend from 1998 to 2008 when these years are viewed in isolation, RTC 3-4 (JA 3812-13), but did not conclude that there was no warming during that time period. More significantly, EPA explained that global temperatures from 1998-2008 remained “well above the long-term average,” RTC 2-41 at 31 (JA 3737), and that the relatively flat

Petitioners likewise claim that EPA “touted” information regarding recent upward trends in CO₂ emissions, increased melting of Arctic ice, and increased sea level rise as “evidence for EPA’s conclusions.” Ind. Br. 53-54. Petitioners rely on a partially-quoted passage taken out of context. The statement is by the Academies of Science for the G8+5 countries, and was cited by EPA in response to comments “question[ing] the notion of scientific consensus around the conclusion of human-induced global warming.” RTC 1-43 at 38, 40-41 (JA 3597, 3599-600). EPA cited this statement to demonstrate that major national and international scientific bodies have expressed support for the assessment literature upon which EPA relied. *Id.* at 40 (JA 3599). EPA did not, however, rely on the information in the quoted passage (which does not even discuss the cause of warming) to support its conclusion attributing most warming since the mid-20th century to increased greenhouse gases.

Petitioners also mischaracterize the conclusion EPA actually reached, i.e., that the evidence suggests that temperatures over the past half-century are unusually warm in comparison to the long-term past. Petitioners point out that there is significant uncertainty regarding the temperature record before 1600. This uncertainty was fully considered by EPA (which, contrary to Petitioners’ assertion, did not label this evidence “compelling”). Ind. Br. 54-55; 74 Fed. Reg. 66,523; temperatures during this short period “do[] not fundamentally alter the longer term warming signal.” TSD at 31 (JA 3379).

TSD at 31-32 (JA 3379-80); RTC 2-62 (JA 3747-49). Nor did EPA ever claim to be 90-99% certain of its conclusion on this particular point; it found only that the evidence suggests and supports this conclusion. See 74 Fed. Reg. at 66,523; see also RTP Section 1.1.2 at 8 (JA 4583 (Vol. X)); Ind. Br. 54-55. Petitioners do not argue that the evidence does not support EPA's actual, more limited, conclusion. Nor have they shown that it was arbitrary for EPA, having acknowledged the uncertainties, to rely on evidence concerning the long-term temperature record as one piece of support for its overall attribution of most recent warming to greenhouse gases.

3. EPA properly relied on climate models.

a. Climate models provide reasonable projections of long-term climate trends.

Computer-based climate model simulations are the third line of evidence supporting the attribution of recent temperature change to increases in greenhouse gases. As the Court has recognized, modeling is “an established technique of environmental analysis” that “facilitates timely decision making.” Chem. Mfrs. Ass'n v. EPA, 28 F.3d 1259, 1264 (D.C. Cir. 1994); see also Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 535 (D.C. Cir. 1983) (EPA has “undoubted power” to use models as long as it “explain[s] the assumptions and methodology used.”) Global climate models developed over several decades simulate the climate's likely long-term response to natural and manmade forcing

mechanisms such as volcanic eruptions, changes in solar radiation, and changes in concentrations of greenhouse gases. These models are founded on basic principles of physics and scientific knowledge about the climate, are constantly tested against known climate conditions, and have been validated by simulating both current and past global climate situations for which there is observed data. Model results typically are presented as ranges, thus accounting for uncertainty. See generally RTC 4-1 (JA 3869-71); see also TSD at 63-64 (JA 3411-12); RTC 4-24, 4-25, 4-27 (JA 3888-90, 3892-93).

EPA has recognized that models are not completely certain (let alone “magic talismans,” Ind. Br. 46). RTC 4-1 at 1 (JA 3869); RTC 4-27 (JA 3892-93). As EPA explained, however, “the issue at hand is not ‘Are the models perfect?’ but ‘Are they reasonable and useful representations of our understanding of the climate system?’” RTC 4-27 at 25 (JA 3893); see also Chem. Mfrs. Ass’n, 28 F.3d at 1265 (“That the model does not fit every application perfectly is no criticism; a model is meant to simplify reality in order to make it tractable.”); Appalachian Power Co. v. EPA, 135 F.3d 791, 802 (D.C. Cir. 1998) (invalidating model because it does not fit every data point “would be to defeat the purpose of using a model”). This issue was “thoroughly reviewed by the [United States Climate Change Science Program],” which – even after considering the uncertainties and limitations of climate models – described climate modeling as “one of the great success stories of

scientific simulation.” RTC 4-27 at 25 (JA 3893). EPA is thus confident that climate models “are useful for attribution, projections, and understanding of climate phenomena,” particularly on a large scale. Id.; see also RTC 4-1 at 2 (JA 3870).

Petitioners argue that the fact that temperatures have not risen steadily over the last 10 to 15 years is contrary to model projections, and that therefore climate models are unreliable because they “fail the basic test of predicting *recent* climate.” Ind. Br. 48-49 (emphasis added). Climate models are, however, designed and used to project *long-term*, large-scale trends. Over relatively short periods, temperature trends can be heavily influenced by natural variability (e.g., El Niño), which can either amplify or mask the long-term trends that climate models project. See RTC 3-6 (JA 3814-15); RTC 4-47 (JA 3912-14). Over the long term, however, external forcings such as increased greenhouse gas concentrations play a much more significant role, and dominate changes from natural variability. See RTC 3-6 (JA 3814-15). There thus is no inconsistency between a decade of relatively flat temperatures and a modeled projection that over the long term temperatures will rise as greenhouse gas concentrations increase.³⁰

³⁰ Petitioners’ claim that “no warming has occurred since 1998,” and that therefore the understanding of the climate system reflected in the models must be wrong, is based on a mischaracterization of an email. See Ind. Br. 49-50. The author of the e-mail has himself rebutted Petitioners’ interpretation. See RTP 1-21 (JA 4612-13 (Vol. X)) (quoting Dr. K. Trenberth) (“It is amazing to see this

Petitioners also claim that uncertainty regarding the sign of feedback (positive or negative) from “changes on extratropical clouds” contrasts with model “assumptions” of “positive cloud feedback.”³¹ Ind. Br. 47. Petitioners confuse the feedback from a subset of clouds (i.e., extratropical clouds) with cloud feedbacks globally. On a *global* scale, and taking into account the uncertainty over extratropical clouds, the IPCC recognized that virtually all models predict positive cloud feedbacks. There is significant uncertainty regarding the size of this feedback, but not regarding its warming effect. AR4 at 633 (JA 5006). EPA properly recognized, moreover, that cloud modeling is one source of uncertainty. RTC 4-3 at 5 (JA 3873); RTC 4-16 (JA 3882).

Neither is “the CO₂ signal . . . lost in the noise of model uncertainties.” Ind. Br. 48. The supposed -25 W/m² “uncertainty range” that Petitioners point to is not an uncertainty range for model outputs at all.³² It is derived from a graph

particular quote lambasted so often. It stems from a paper I published this year bemoaning our inability to effectively monitor the energy flows associated with short-term climate variability. It is quite clear from the paper that I was not questioning the link between anthropogenic greenhouse gas emissions and warming, or even suggesting that recent temperatures are unusual in the context of short-term natural variability.”). His comments on geoengineering relate to actions such as injecting reflective aerosols into the stratosphere, not to reducing greenhouse gas emissions. See RTP 1-26 (JA 4619-20 (Vol. X)); Ind. Br. 50.

³¹ As discussed *supra* at 47, feedbacks are not “assumptions,” but the result of the model’s application of scientific principles.

³² It does not appear that either this argument or Petitioners’ “circular logic” argument (*infra* at 56) were raised in comments on the proposed Endangerment Finding. If Petitioners cannot demonstrate that they raised these concerns during

identifying the amount of solar reflection from clouds, for different latitudes, from each of several individual models. The -25 W/m^2 value is the maximum difference in reflectivity between the models for any one of the various latitudes, not the uncertainty range in the model results for any single model. See AR4, Ch. 8, Supp. Materials 8-27 (JA 5016). The variation across the models in global averages for cloud reflection is much closer, approximately -6 W/m^2 . AR4 at 610 (JA 5001). This difference in the models reflects somewhat different baselines for global cloud cover. What matters for purposes of model projections, however, is the *change* from baseline conditions. Regardless of the difference in baselines, *all* models calculate that increasing CO_2 concentrations will result in both direct warming from the CO_2 and a positive (warming) feedback from a change in clouds. AR 4 at 631-33 (JA 5004-06). Petitioners do not contest this fact. The direct and indirect warming from increased CO_2 is by no means lost in the “noise” of model results.

Petitioners also claim that EPA has “use[d] models that *assume* anthropogenic global warming to try to *prove* anthropogenic global warming.” Ind. Br. 51. Models do not “assume” this result; rather, they rely on the basic laws of physics and scientific knowledge about the climate. The models simulate the effect of various changes – increases in greenhouse gas concentrations, changes in

the comment period, these argument have been waived. See 42 U.S.C. § 7607 (d)(7)(b).

solar variability, changes in aerosol levels, and so forth – in light of these known physical principles. See TSD at 63 (JA 3411); RTC 4-1 (JA 3869-71). While models “are not the foundation of climate science,” they are critical “tools used to better understand information and data from multiple sources and disciplines,” and together with the other evidence in the record provide important support for EPA’s conclusion that increases in manmade greenhouse gases are very likely the cause of most warming since the mid-20th century. RTC 4-1 at 1 (JA 3869).

b. Climate models have been properly validated.

Whether intentionally or not, Petitioners misunderstand the nature of model validation. Models are constantly tested against known climate conditions, and have been validated by simulating both current and past global climate situations. See TSD at 63 (JA 3411); RTC 4-1 (JA 3869-71); Dkt. No. 12197 at 23 (JA 5168). Petitioners ignore this evidence, pointing to a purported “problem of circular logic” allegedly derived from (1) using model-generated data to fill “gaps” in the observational record, and (2) using that augmented data to validate climate models. See Ind. Br. 50-51. As to the first point, the “observational record” is comprised of a variety of observations of factors such as temperature, wind, and precipitation across the globe, at various levels in the atmosphere, over time. See, e.g., Dkt. No. 12197 at 8 (JA 5153). It is not surprising that there are some regions or types of information for which there is less observed information than others; that there is a

varying quality of observed data; or that there is less information about historic events than about more recent conditions. For some purposes, the climate change scientific community uses modeling to augment observations by filling in unobserved regions in a manner consistent with the physics of the atmosphere.³³ See Dkt. No. 12197 at 17 (JA 5162).

Using the observational record with the augmented data described above provides “valuable benchmarks against which key features of model simulations can be meaningfully assessed.” See Dkt. No. 12197 at 52 (JA 5189). Importantly, augmented observational records are typically used to validate models other than the ones that provided the augmented data in the first place. Finally, for many variables, models are validated by evaluating their ability to predict known current and past climate conditions, without augmented data. AR4 at 594-95 (JA 4999-5000). The “reanalysis” process that Petitioners attack is therefore neither circular (as they claim) nor the only means by which models are validated.

D. The Record Supports EPA’s Finding That The Air Pollution May Reasonably Be Anticipated To Endanger Public Health And Welfare.

After reviewing a wide range of evidence, EPA found that climate change caused by greenhouse gas emissions may reasonably be anticipated to endanger

³³ For example, a model might be used to interpolate wind speed between different measured locations, in a manner consistent with observed temperatures between those locations.

public health and welfare in many ways. See supra at 16-18; 74 Fed. Reg. at 66,497-99, 66,523-36. Petitioners do not contest the body of evidence supporting these findings, or the overwhelming majority of EPA's conclusions, and do not otherwise demonstrate that EPA's endangerment finding was arbitrary or capricious.

1. EPA's findings on harm are supported by the record.

Petitioners again misstate both the nature and the uniformity of EPA's conclusions. See, e.g., Ind. Br. 4 (referring to EPA's purported "combined finding of high probability/high severity of harm"), 43 (same). Petitioners cite no record support for their claim that EPA found universally "severe" harm arising from climate change, or that EPA forecast an inevitable onslaught of "fire, floods, and pestilence." Ind. Br. 55; see also id. at 42. EPA's conclusions were, in fact, far more comprehensive and reasoned. EPA canvassed the evidence and carefully weighed the likelihood and severity of a range of potential harms to public health and welfare. See 74 Fed. Reg. at 66,506. Some projected harms are more significant, some less; some more likely, some less; some more imminent, some at greater reach. See generally 74 Fed. Reg. at 66,497-99, 66,524-36. The record shows that EPA did not make "crystal ball" projections, Ind. Br. 55, but instead carefully evaluated the evidence and drew reasoned and balanced conclusions from it.

The “laundry list” that Petitioners offer, Ind. Br. 55, covers only a fraction of the potential harms reviewed by EPA. Petitioners’ list identifies instances in which EPA identified and accounted for an uncertainty in the evidence. See 74 Fed. Reg. at 66,524-36. Potential impacts on particulate matter (PM) levels, disease vectors, aeroallergens, forage quality, renewable energy production, and the power grid, Ind. Br. 55-56, were less certain than other impacts, and therefore were not impacts on which the Administrator placed “primary weight.” See 74 Fed. Reg. at 66,525-26; TSD at 87-88 (JA 3435-36). Accounting for the strengths and weaknesses of the evidence demonstrates careful evaluation and reasoning, not arbitrariness.

Where Petitioners discuss factors that were of greater significance to the Endangerment Finding, they mischaracterize EPA’s findings to suggest greater uncertainty than actually exists. For example, Petitioners truncated EPA’s discussion of potential impacts on human settlements in a misleading manner. What EPA concluded is that “[e]ffects of climate change on human settlements in the United States are very likely to vary considerably according to location-specific vulnerabilities, *with the most vulnerable areas likely to include Alaska, flood-risk coastal zones and river basins, arid areas with associated water scarcity, and areas where the economic base is sensitive* (CCSP, 2007a).” TSD at 129 (JA 3477) (italics added to identify language omitted by Petitioners); see also

74 Fed. Reg. at 66,533 (discussing effects of sea level rise). Petitioners' omissions incorrectly imply that EPA expressed far more uncertainty than it actually did, since the omitted language identifies areas where the effects are more certain and potentially severe.

Petitioners also omit a key portion of the TSD's discussion of hurricanes, citing only the statement that frequency changes in hurricanes cannot be confidently projected. Ind. Br. 56. The prior sentence in the TSD, however, states that "[i]t is likely that hurricanes will become more intense, with stronger peak winds and more heavy precipitation" TSD at ES-4 (JA 3345); see also 74 Fed. Reg. at 66,524-25 (discussing increased storm severity). Thus, while EPA appropriately concludes there is less certainty of more hurricanes, it is relatively confident that climate change increases the risk of any given hurricane becoming more intense – a factor that legitimately contributed to the Endangerment Finding.

Petitioners similarly note that it is difficult to predict changes in ozone levels based solely on temperature, Ind. Br. 55, while omitting the fact that although there is expected to be regional and temporal variation, EPA found that the overall effect of climate change would be increased ozone levels, especially in the most populated and worst polluted regions. See 74 Fed. Reg. at 66,525. Further, Petitioners note that EPA recognized that it is not clear whether increased heat will prevent more cold-related deaths than it will cause heat-related deaths – but omit

the fact that the USGCRP study cited by EPA ultimately concluded that “increases in heat-related mortality due to global warming in the United States *are unlikely to be compensated for by decreases in cold-related mortality.*” Id. (emphasis added).

With regard to erosion and ecosystem loss, Petitioners note uncertainty over the degree to which these losses result from rises in sea level attributed to climate change, as opposed to other factors such as land subsidence. Ind. Br. 56. But they fail to acknowledge that (1) although EPA cannot precisely quantify the amount of such losses ultimately traceable to climate change, it is clear that climate change will make such losses worse; and (2) erosion and ecosystem loss were merely one of many impacts of sea level rise that EPA considered. See TSD at 118-120 (JA 3466-68); 74 Fed. Reg. at 66,533.

Petitioners complain that EPA’s analysis is “one-sided,” alleging that EPA “disregard[ed]” particular uncertain evidence of the benefits of climate change while crediting uncertain evidence of harm. Ind. Br. 56-57. To the contrary, the record demonstrates that EPA thoughtfully weighed this and other evidence of both the risks and the benefits of various potential impacts of climate change. See, e.g., 74 Fed. Reg. at 66,531 (in near term, concern for adverse effects in certain agricultural sectors is “generally comparable” to potential benefits, but over the long term evidence points towards increasing risk of net adverse effects on food production and agriculture); TSD 93-95 (JA 3441-43) (discussing multiple ways in

which climate change could either increase or decrease PM levels). The fact that EPA, after carefully weighing all record evidence and fully explaining its rationale, reached a different conclusion than Petitioners would prefer does not mean EPA's action was "one-sided" or arbitrary.

2. EPA properly found harm to both public health and welfare.

In concluding that greenhouse gases may reasonably be anticipated to endanger both public health and welfare, EPA interpreted the term "public health" to include health impacts arising from climate change caused by greenhouse gases, and did not limit itself to health effects from direct exposure to greenhouse gases.³⁴ See 74 Fed. Reg. at 66,526. EPA explained the basis for its interpretation in depth, and Petitioners offer no evidence that EPA's interpretation is unreasonable. See 74 Fed. Reg. at 66,526-29.

There is no support for Petitioners' claim that only direct, inhalational effects of exposure to an air pollutant qualify as impacts on "public health." See Ind. Br. 57-58. NRDC v. EPA, 902 F.2d 962 (D.C. Cir. 1990), vacated in other part, 921 F.2d 326 (D.C. Cir. 1991), Ind. Br. 58, does not support Petitioners' argument. In that case, the Court rejected the argument that EPA should have considered the health consequences of the unemployment that would allegedly

³⁴ Petitioners' conclusory assertion that evidence regarding public health effects in the United States is somehow lacking, Ind. Br. 58, is belied by the administrative record. 74 Fed. Reg. at 66,514, 66,523-26.

result from a too-stringent air quality standard. See id. at 972-73. The Court held that under the applicable statute, EPA could only consider “health effects relating to pollutants in the air.” Id. at 973 (citing 42 U.S.C. § 7408(a)(2)). It did not say that such health effects had to originate from inhalation, or what Petitioners call “direct” effects. EPA has, moreover, previously considered effects other than direct, inhalational effects in finding a threat to public health. See, e.g., Coal. of Battery Recyclers v. EPA, 604 F.3d at 615 (public-health-based primary NAAQS includes consideration of adverse health effects from ingestion as well as inhalation of lead emitted into the air); see also Am. Trucking Ass’n v. EPA, 175 F.3d 1027, 1051-53 (D.C. Cir. 1999) (in setting public-health-based NAAQS, EPA must consider potential for indirect health benefits from ozone in the atmosphere blocking UVb radiation), aff’d in part, rev’d in part sub. nom. Whitman v. Am. Trucking Ass’n, 531 U.S. 457 (2001).

Even if Petitioners could demonstrate that harms to public health identified by EPA could be considered only as effects on public “welfare,” EPA’s findings would be proper. Section 202(a) requires a determination of whether air pollution may reasonably be anticipated to endanger “public health *or* [not “and”] welfare.” 42 U.S.C. § 7521(a). EPA has thus found all that the statute requires.

III. EPA PROPERLY DENIED THE RECONSIDERATION PETITIONS

EPA received ten petitions for reconsideration of the Endangerment Finding (and seven supplements thereto). These petitions and supplements ran to over 500 pages, cited dozens of studies totaling hundreds of pages, and referenced more than 1000 emails and 300 pages of computer code. As we discuss in the following sections, after a thorough review EPA concluded that the evidence presented did not support the claims made in the petitions for reconsideration and did not offer any support for a revision of the Endangerment Finding.³⁵ See generally 75 Fed. Reg. at 49,556, 49,557-58, 49,563-78, 49,583-84. EPA therefore declined to convene a reconsideration proceeding.

A. EPA Was Entitled to Weigh the Evidence Submitted With The Reconsideration Petitions Before Deciding Whether to Grant Reconsideration.

Section 307(d)(7)(B) of the Act provides that if a petitioner can demonstrate both that it was “impracticable” to raise an objection during the comment period, or the grounds for that objection arose after the comment period, “*and [that] such objection is of central relevance to the outcome of the rule,*” EPA shall convene a

³⁵ EPA also found that many of the objections raised in the petitions could have been raised during the comment period. See 75 Fed. Reg. at 49,584; 42 U.S.C. § 7607(d)(7)(B) (reconsideration petitioner required to demonstrate that it was impracticable to raise objection during original comment period). Petitioners do not challenge this aspect of EPA’s decision.

reconsideration proceeding. 42 U.S.C. § 7607 (d)(7)(B) (emphasis added).³⁶ The “central relevance” standard places the burden on the party seeking to disturb a settled agency action to demonstrate that new evidence identified in the reconsideration petition would “provide *substantial support* for the argument that the regulation should be revised.” 75 Fed. Reg. at 49,561 (emphasis added).

The “substantial support” standard “gives proper weight to . . . the importance Congress attributed to preserving the finality of agency rulemaking decisions.” *Id.* This is a high standard, but not insurmountable. EPA did not, as Kansas claims, require that the reconsideration Petitioners demonstrate that their argument “must ultimately prevail.” Kan. Br. 19; *see also id.* at 4. EPA did, however, reasonably require that information submitted with the reconsideration petitions, when viewed in the context of the entire record, substantially support the argument that the Endangerment Finding should be reopened.³⁷

³⁶ Petitioners appear to view EPA’s Denial as analogous to an agency procedural error in promulgating a rule, arguing that EPA should have applied Section 307(d)(8) of the Act, 42 U.S.C. § 7607(d)(8). Va. Br. 22-23. Amicus State of Kansas, on the other hand, argues that EPA improperly applied Section 307(d)(8). Kan. Br. 19-21. Both are wrong. Section 307(d)(7)(B) explicitly governs administrative petitions for reconsideration, and EPA applied the Section 307(d)(7)(B) standard in considering the reconsideration petitions. *See* 75 Fed. Reg. at 49,561. EPA discussed the language in Section 307(d)(8) only in interpreting Section 307(d)(7)(B)’s “central relevance” language. *See id.*

³⁷ Petitioners argue that the length of EPA’s response to the petitions for reconsideration means the claims made in the petitions must have warranted a reconsideration proceeding. *See, e.g.,* Va. Br. 4, 14, 19. Petitioners offer no authority to support this page-count argument, and fail to explain why –

Petitioners pay only lip service to the principle that a party that seeks reconsideration must offer substantial support for its request, proposing to gut this requirement by prohibiting EPA from considering the weight or validity of evidence presented in a petition for reconsideration without first seeking public comment.³⁸ See Va. Br. 14, 23-24; see also Kan. Br. 9, 18-19. If EPA could not consider the merits of a petitioner's arguments and evidence, EPA would *never* be able to deny a reconsideration petition without first seeking comment. As long as a petition included any evidence or argument that, when viewed in the abstract and assumed to be correct, could substantially support an argument that an agency action should be revised, EPA would be forced to grant reconsideration – no matter how flawed the proffered evidence, or how insignificant in comparison to other evidence in the administrative record. Section 307(d)(7)(B) does not impose such a standard, and Petitioners offer no justification for their demand that EPA

particularly in light of the length and complexity of the numerous reconsideration petitions – EPA should be penalized for providing a full and detailed explanation of its bases for declining to convene a reconsideration proceeding.

³⁸ Petitioners go so far as to argue that an agency “is *incapable* of knowing and deciding scientific matters in the absence of notice and comment.” Va. Br. 17 (emphasis added). Unsurprisingly, the case cited as support for this extreme proposition says nothing of the sort. In Kennecott Corp. v. EPA, 684 F.2d 1007 (D.C. Cir. 1982), this Court held that EPA had violated the Act's procedural requirements by not including documents that formed part of the basis for its original action in the docket for public comment. Kennecott, 684 F.2d at 1018. In this case, by contrast, Petitioners argue that EPA should *reconsider* the Endangerment Finding based on new evidence submitted by the Petitioners. Nothing in Kennecott speaks to this situation. See generally 75 Fed. Reg. at 49,561-62 (discussing Kennecott).

consider a petitioner's evidence in a vacuum, assume its correctness, and decline to use the Agency's experience and expertise in evaluating that evidence and deciding whether to disturb a final agency action and convene a reconsideration proceeding.

B. EPA Was Not Required to Seek Public Comment on Material It Considered Before Denying the Reconsideration Petitions.

Petitioners argue that EPA improperly relied on documents placed in the docket after the close of the comment period on the Endangerment Finding in denying the petitions.³⁹ See Va. Br. 16; Kan. Br. 9-10, 21-22, 23-24. Almost half of the “more than four hundred documents,” Va. Br. 16, placed in the docket after the close of the comment period on the Endangerment Finding were placed in the docket before signature of that Finding, and are properly part of the record for that action.⁴⁰ EPA also placed a number of documents in the record for the Denial after signature of the Finding, including the CRU emails that were a significant focus of the reconsideration petitions; independent investigations related to those emails;

³⁹ In a related point, Petitioners contend that in denying the petitions for reconsideration, EPA altered the basis of the Endangerment Finding. See Va. Br. 14-16, 24-27 see also Kan. Br. 22. EPA's response to the petitions for reconsideration is solely that – a response, not a “supplement[]” to or revision of the Endangerment Finding. See Va. Br. 27. EPA's action on the petitions for reconsideration thus does not trigger the need for a new notice and comment period on the Endangerment Finding itself.

⁴⁰ These added documents are typical of those routinely added to an administrative record as EPA finalizes an action, including material updated since the original proposal; drafts provided for interagency review (required to be docketed by Section 307(d)(4)(B)(ii), but not part of the record); pre-publication versions of the Findings; the Response to Comments; the final TSD; and scientific articles and data cited by EPA in responding to public comments.

scientific articles cited in responding to the petitions for reconsideration; and final versions of the Denial and the Response to Petitions. The “additional” material placed in the record by EPA was in many cases submitted or referred to by Petitioners, or was otherwise directly relevant to responding to the reconsideration petitions.

The suggestion that an agency is not entitled to rely on the full record for the underlying agency action, or to place *any* additional material in the reconsideration record without seeking comment, again ignores the role of agency expertise and knowledge. See Va. Br. 4; Kan. Br. 9-10. Suppose, for example, that a reconsideration petitioner submits Study A which, on its face, could be viewed as rebutting some fact or principle that EPA relied on in making the Endangerment Finding. Suppose further that Studies B-G, additional studies in the relevant field, all refute the conclusions reached in Study A. Petitioners offer no authority for the proposition that EPA’s only choices are to (a) pretend that studies B-G do not exist, or (b) convene a reconsideration proceeding in order to consider Studies B-G. This is not a hypothetical situation: as EPA noted in the Denial, in addition to Petitioners misstating the meaning and significance of recent scientific information in their petitions, “there are instances where the Petitioners have failed to

acknowledge other new studies in making their arguments.” 75 Fed. Reg. at 49,584.⁴¹

In a related claim, Amicus State of Kansas argues that (1) by stating that a reconsideration petition may be filed regarding a “rule,” Section 307(d)(7)(B) “necessarily includes the lawful record that supports the rule”; (2) Section 307(d)(6)(C) provides that a rule may not be based on material placed in the docket after its promulgation; and (3) EPA therefore could not consider any material other than that already in the docket or presented with the petitions for reconsideration. Kan. Br. 22-23. Section 307(d)(7)(B) contains no limitation on the record EPA may consider in acting on a petition for reconsideration. Nor does Kansas offer any logical justification for reading a statutory limitation on the *rulemaking* record as an additional, unstated limitation on the *reconsideration* record.

C. The CRU Emails Did Not Require EPA to Convene a Reconsideration Proceeding.

State Petitioners and amicus State of Kansas focus on the so-called “climategate” emails from the University of East Anglia’s Climate Research Unit

⁴¹ Petitioners’ claim that EPA improperly relied on a May 2010 National Research Council assessment, Va. Br. 16-17, is contradicted by the administrative record. See 75 Fed. Reg. at 49,558 (appropriately citing NRC assessment as “clear affirmation” that the scientific bases for the Endangerment Finding “are robust, credible, and appropriately characterized by EPA”); compare *id.* at 49,563-79 (discussing EPA’s own review of science issues). The “no published criticisms” statement cited by Petitioners refers to studies cited *in* the NRC assessment, not to the assessment itself. See RTP 1-29 at 50 (JA 4625 (Vol. X)).

(the “CRU emails”), arguing that these emails undermined the Endangerment Finding and therefore required EPA to convene a reconsideration proceeding to consider them. See generally Va. Br. 10-11, 31-36; Kan. Br. 5-6, 8-9, 24. As EPA explained, the assertions made by Petitioners regarding these emails were “exaggerated,” are “often contradicted by other evidence,” and did not provide a “material or reliable basis to question the validity and credibility of the body of science underlying the Administrator’s Endangerment Finding.” 75 Fed. Reg. at 49,557.

EPA did not reach this conclusion lightly. It thoroughly reviewed and analyzed *all* of the emails presented in the reconsideration petitions. See, e.g., 75 Fed. Reg. at 49,557, 49,570-71, 49,573-74, 49,578-84.⁴² EPA found that “[p]etitioners’ assumptions and subjective assertions regarding what the e-mails purport to show about the state of climate change science are woefully inadequate pieces of evidence to challenge the voluminous and well documented body of science that is the technical foundation of the Administrator’s Endangerment Finding.” 75 Fed. Reg. at 49,584. As EPA noted, moreover, multiple independent investigative bodies similarly concluded that the CRU emails provided no evidence

⁴² Petitioners’ briefs repeat many of the claims regarding the CRU emails that were in the petitions for reconsideration, yet Petitioners barely acknowledge EPA’s extensive and detailed analysis of those claims in the three-volume RTP. Even less do Petitioners respond to that analysis. In fact, Petitioners do not identify even a single alleged error in EPA’s response.

of scientific misconduct or data manipulation by climate scientists, and did not cast doubt on the underlying body of science they had developed.⁴³ 75 Fed. Reg. at 49,558.

Petitioners claim that by failing to seek comment on the CRU emails, EPA left the record incomplete and denied the Court the benefit of EPA's response to comments. Va. Br. 17-18; Kan. Br. 24. First, Petitioners were free to raise their objections by filing petitions for reconsideration (and indeed the petitions that were submitted exceeded 500 pages). Second, a record that includes a 36-page Federal Register notice explaining the basis for EPA's denial of the reconsideration petitions and a three-volume Response to Petitions that examines in detail each and every issue and piece of evidence raised in the petitions clearly provides an adequate basis for judicial review.

⁴³ Petitioners criticize these investigations on the ground that they allegedly failed to address whether the CRU emails "undercut the reliability of the science," Va. Br. 4, then reverse course and cite the investigations as support for their arguments regarding alleged uncertainties in the science. Va. Br. 4-8. EPA does not agree with Petitioners' characterization of the conclusions reached by the various investigations. Those investigations were, however, cited only as being "in line with *EPA's* review and analysis of [the CRU emails]." 74 Fed. Reg. at 49,557 (emphasis added); see also, e.g., id. at 49,578-79, 49,581-83 (discussing EPA analysis of CRU emails).

D. The Reconsideration Petitions Did Not Demonstrate Any Departure From EPA's Information Quality Guidelines or Call Into Question EPA's Use of the IPCC Reports.

EPA followed its Information Quality Act guidelines, relying on information that was, and is, “accurate, reliable, and unbiased.” See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency (October, 2002), available at <http://www.epa.gov/quality/informationguidelines> (last visited Aug. 16, 2011). The guidelines may apply to a subsequent dissemination of the information in which EPA adopts, endorses, or uses the information to formulate or support a regulation, guidance, or other Agency decision or position. Id. at 16. The public comment process EPA used in the development of the Endangerment Finding provided for the thorough consideration of the information relied upon by EPA, and served the purposes of the Guidelines by providing an opportunity for correction of any information that does not comply with the Guidelines. See id. at 32. Petitioners have failed to demonstrate that the reconsideration petitions showed otherwise. See generally Va. Br. 31-36; Kan. Br. 12-18.

Petitioners claim that the reconsideration petitions demonstrated that the IPCC “frequently” relied on “unscientific,” non-peer-reviewed studies. Va. Br. 33-34; see also Kan. Br. 14-16. Petitioners cannot support this conclusion, as the vast majority of studies reviewed by the IPCC were fully peer-reviewed. RTP 2-33 at

71 (JA 4812). The IPCC's policy recognized and allowed limited use of "gray" literature where necessary and appropriate. Id.; see also RTC 1-14 (JA 3568-74). The limited use of a small number of non-peer-reviewed studies among the much larger body of peer-reviewed material does not undermine the IPCC's overall conclusions, nor does it warrant reconsideration of EPA's reliance on those conclusions as the technical basis for the Endangerment Finding.

Petitioners also attack the IPCC's peer review process, claiming that IPCC authors are free to disregard critical comments or rewrite material after the close of the review period. Va. Br. 11; Kan. Br. 14-16. This is simply untrue; as EPA explained, each IPCC chapter has a separate review editor who is not involved with writing that chapter and is responsible for ensuring that all reviewer comments are appropriately addressed by the chapter authors. See RTP 2-31 (JA 4808-09). Kansas also claims that EPA ignored its own peer review policy by using government scientists as peer reviewers. Kan. Br. 26. However, EPA's peer-review policy allows for the use of non-EPA federal scientists as peer reviewers, which is what EPA did. See U.S. Environmental Protection Agency, Peer Review Handbook, 3rd Edition, 2006, at 26 (JA 5795) (peer reviewers "can come from EPA, another Federal agency, or from outside of the Federal government"); see also RTP 3-7 (JA 4842-44); RTC 1-10 (JA 3566).

Neither have Petitioners offered any support for their other attacks on the IPCC process. Va. Br. 10-11, 36; Kan. Br. 11, 16-18. Petitioners rely on various investigations of the CRU emails. See id. These investigations were not, as a general matter, directed at the IPCC process; they were, instead, limited to a review of practices at the CRU and by a particular researcher in the United States. The overall conclusion of the independent investigations has, moreover, been that, while some IPCC procedures could be improved, any procedural deficiencies did not cast doubt on either the work performed by the CRU or the IPCC's use of that work. See, e.g., The Independent Climate Change E-Mails Review at 11 (JA 5546).⁴⁴

Finally, as we next discuss, the few alleged factual errors made by the IPCC either were not errors at all or were immaterial to the Endangerment Finding. The petitions to reconsider thus failed to support the Petitioners' claims that the science relied on in the Endangerment Finding should be reconsidered.

⁴⁴ EPA responded in detail to Petitioners' conclusory claims of withheld, lost or destroyed data (RTP Sections 1.3.3.1-.2, JA 4641-48 (Vol. X)); RTP Sections 3.4.1.2, JA 4901-18), reliance on IPCC authors' own studies (RTP Section 2.2.3.2, JA 4787-89); conflicts of interest among IPCC personnel (RTP Section 2.2, JA 4775-4815), and attempts to stymie adverse studies (RTP Section 2.2.3.4, JA 4798-4806). See Va. Br. 10-11; Kan. Br. 15-16. Petitioners do not even attempt to identify any deficiencies in EPA's response.

E. Evidence Presented In The Reconsideration Petitions Did Not Provide Substantial Support For An Argument That The Endangerment Finding Should Be Reopened.

Petitioners point to a supposedly pervasive “pattern” of flawed science, but identify only a handful of isolated, insignificant alleged missteps. See Va. Br. 12; Kan. Br. 13-14. Only two of these are actually errors in the IPCC’s assessment report, and neither was part of the basis for the Endangerment Finding. 75 Fed. Reg. 49,576. The claimed factual errors thus were clearly not of central relevance to the Endangerment Finding.

Percentage of Netherlands lying below sea level: The IPCC has acknowledged that, based on information received from the Netherlands, AR4 misstated the percentage of that country that is below sea level. The IPCC has since published a correction. In so doing, the IPCC confirmed that this statistic was originally used “for background information only, and the updated statistic remains consistent with overall conclusions.” RTP 2-1 at 8 (JA 4749) (noting mistaken and correct percentages). EPA concluded that this error was “minor and inconsequential” to the Endangerment Finding, which did not in any way refer to or rely on the percentage of the Netherlands that is below sea level. Id. at 9 (JA 4750); see also 75 Fed. Reg. at 49,576.

Himalayan glaciers: The IPCC has acknowledged misstating the *rate* at which Himalayan glaciers are receding, but the fact that they *are* receding is not in

question. See 75 Fed. Reg. at 49,577; RTP 2-2 (JA 4750-51). Moreover, EPA did not rely on the erroneous projection in the Endangerment Finding. Id.

African agriculture yields: As explained in response to the petitions for reconsideration, the “policy paper” concerning agricultural yields that Petitioners attack was used in accordance with IPCC policies on “gray” literature. See RTP Section 2.1.7 at 24-25 (JA 4765-66). After a careful review, EPA concluded that statements made by the IPCC in reliance on the challenged paper were neither faulty nor included uncritically. Id. at 26 (JA 4767). In addition, this paper relates to impacts *outside* the United States, and therefore did not materially impact the Administrator’s determination regarding impacts *within* the United States. Id. at 24-25 (JA 4765-66).

Amazon rain forests: The reaction of Amazon rain forests to reductions in precipitation is not discussed anywhere in the Endangerment Finding or TSD, and is thus of little relevance to the Finding. RTP 2-9 at 21 (JA 4762). EPA noted, moreover, that although the IPCC used a non-peer-reviewed study on this issue, that study was in turn based on peer-reviewed literature. Id.

Projections of more violent storms: Petitioners list “*projections* of more violent storms” as an alleged error, but cite references concerning *historical* trends in storms. Va. Br. 12 (emphasis added). EPA considered new studies submitted with the petitions for reconsideration concerning such trends, and concluded that

these studies were consistent with the TSD and the Endangerment Finding. RTP 1-85 at 143-44 (JA 4718-19).

EPA's discussion of these points demonstrates the weakness of Petitioners' claims regarding the quality or reliability of the scientific basis for the Endangerment Findings. All that State Petitioners can find to attack are minor, isolated errors (or non-errors) occurring in a few scattered studies selected from a multi-volume assessment containing thousands of pages of findings and conclusions. These attacks do not undermine the IPCC's conclusions or EPA's Endangerment Finding. See 75 Fed. Reg. at 49,558, 49,576-77.

IV. EPA REASONABLY CLASSIFIED SIX GASES AS ONE POLLUTANT

Section 202(a) requires EPA to determine whether emissions of any "air pollutant" from motor vehicles cause or contribute to "air pollution" that may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. § 7521(a)(1). EPA concluded that an aggregate group of six greenhouse gases constitutes both the "air pollution" endangering health and welfare and the "air pollutant" that contributes to this pollution. See supra at 18-19; 74 Fed. Reg. at 66,536-38. EPA carefully set forth the common attributes shared by the six greenhouse gases that supported the Agency's decision to aggregate them as a

single air pollutant.⁴⁵ Among other things, these gases are all directly-emitted (i.e., not formed in the atmosphere through the interaction of precursor gases), long-lived (so they become globally well-mixed in the atmosphere), and have well-understood warming effects. 74 Fed. Reg. at 66,537. Importantly, the common attributes that EPA relied on in deciding to aggregate these gases as a single air *pollutant* are relevant as well to the air *pollution* for which greenhouse gases are agents – it is because of these commonly shared attributes that these six gases are known to be the primary driver of climate change and thus the primary focus of climate change science and policy. 74 Fed. Reg. at 66,517; RTC 10-1 (JA 3986-87).

Petitioners do not dispute this rationale, but argue instead that EPA's definition is inconsistent with the Act under Chevron. Ind. Br. 30-33. As to Chevron step one, Section 302(g) of the Act defines "air pollutant" as "*any air pollution agent or combination of such agents, . . . which is emitted into or otherwise enters the ambient air.*" 42 U.S.C. § 7602(g) (emphasis added). As the Supreme Court held in Massachusetts, this is a "sweeping" definition, "embrac[ing] all airborne compounds of whatever stripe." 549 U.S. at 528. The

⁴⁵ Petitioners' claim that EPA improperly "group[ed] six *separate* air pollutants" into one, Ind. Br. 30 (emphasis added), misses the point. Each of the six substances individually is an "air pollution agent;" consistent with Section 302(g), 42 U.S.C. § 7602(g), EPA defined the combination of these agents as an "air pollutant."

Court further concluded that greenhouse gases “fit well” within this “capacious” definition, and that they are “unquestionably ‘agents’ of air pollution.” Id. at 532, 529 n.26. Petitioners inexplicably assert that EPA has violated Chevron step one by doing precisely what the statute explicitly authorizes EPA to do. Ind. Br. 30-31. Given that Congress has “directly spoken to the precise question at issue,” 467 U.S. at 842-43 – saying that EPA may consider a “combination of . . . agents” to be a single “air pollutant,” which is precisely what EPA did here – Petitioners’ conclusory Chevron step one argument necessarily fails.

Petitioners also inaccurately assert that EPA’s grouping of six greenhouse gases as a single air pollutant is inconsistent with past Agency practice. Ind. Br. 30-31. They focus on EPA’s grouping of particles of less than 2.5 microns in diameter as a single air pollutant (PM_{2.5}), but ignore the closer analog of volatile organic compounds (VOCs) or particulate matter (PM) – hundreds of different chemical compounds, all of which are treated as a single “air pollutant.” See 74 Fed. Reg. at 66,540-41; see also id. at 66,537. VOCs, like the six gases at issue here (and, for that matter, like PM_{2.5} or PM) are grouped as a single “pollutant” because they all have similar attributes and effects related to their impact on the air pollution. See 74 Fed. Reg. at 66,541; RTC 10-4 (JA 3990-91). Indeed, EPA’s approach makes sense applying Petitioners’ own argument regarding PM_{2.5} to the greenhouse gas air pollutant, because “it is the [compound’s] greenhouse gas

effect], not its composition, that poses the relevant risks to public health and welfare.” Ind. Br. at 31. EPA thus acted consistently with past Agency practice in grouping six greenhouse gases into a single “air pollutant.”

Petitioners further claim that EPA’s grouping of six greenhouse gases as the “air pollutant” “subverts” the purpose of the Act, Ind. Br. 31, but never explain precisely how. Section 202(a) requires a contribution finding for the *air pollutant*, not for each and every air pollution *agent* within a defined “air pollutant;” thus, the fact that EPA did not make a separate contribution finding for each of the six greenhouse gases individually is irrelevant. What matters for purposes of a Section 202 contribution analysis is the total amount of the greenhouse gas *air pollutant* emitted by motor vehicles, not the amount of each agent emitted.

Petitioners try to make much of the fact that motor vehicles do not emit all of the greenhouse gases in the defined “air pollutant.”⁴⁶ Ind. Br. 31, 32-33. As EPA explained, the fact that these six greenhouse gases share relevant attributes and are similar agents of the same air pollution remains true regardless of what sources or source categories may emit the greenhouse gases. See 74 Fed. Reg. at 66,541; RTC 10-2 (JA 3987-89). Petitioners’ approach would disregard the fact

⁴⁶ To the extent that Petitioners argue that EPA should not have included substances not emitted by motor vehicles in the definition of “air pollutant,” Ind. Br. at 32, there is a serious question whether Petitioners have standing. Petitioners have not identified even one emissions source that is subject to regulation due to EPA’s definition, but that would escape regulation if the definition of “air pollutant” did not include substances not emitted by motor vehicles.

that SF₆ and PFCs share common attributes with the other four greenhouse gases, simply because they are not emitted by motor vehicles, thus ignoring relevant scientific considerations. See RTC 10-2 (JA 3987-89).

Petitioners' approach would also produce odd and potentially cumbersome outcomes. If EPA were required to limit its definition of "air pollutant" according to which specific air pollution agents a particular source category emitted, the result would be the proliferation of multiple defined air pollutants, all very similar to one another in effect (as all contribute to climate change) and all containing many overlapping air pollution agents (such as CO₂, which is emitted by almost all sources), yet each differing from the other according to what is *not* emitted by a particular source category. Such an approach makes no sense, and is by no means compelled by the statute.

There is longstanding precedent for defining an air pollutant broadly, even if a particular source category may not emit every substance covered by that air pollutant. 74 Fed. Reg. at 66,541 (discussing heavy duty truck standards applicable to VOCs and PM, and noting "it is highly unlikely that heavy duty trucks emit every substance that is included in the group defined as VOC or PM"). Petitioners do not challenge EPA's conclusion that motor vehicle emissions contribute to the air pollution consisting of the six well-mixed greenhouse gases – a finding that EPA would have made even if it defined the relevant air pollutant to

consist solely of the four gases emitted by Section 202 sources. Id. Petitioners have thus failed to demonstrate that EPA's definition of "air pollutant" here to include substances not emitted by motor vehicles was unreasonable.

Finally, there is no support for Petitioners' claim that EPA's definition of "air pollutant" as an aggregate of six greenhouse gases will unfairly impact some stationary sources.⁴⁷ A coal mine would not be "subject to methane regulation because automobiles emit relatively large quantities of CO₂," but because the mine and motor vehicles both emit greenhouse gases. Nor would a facility emitting four tons of SF₆, 50 tons of CO₂, and 50 tons of N₂O (i.e., 104 tons of greenhouse gases, more than the 100-ton statutory threshold) become subject to permitting requirements because of a CO₂ equivalence calculation. Ind. Br. 31-32. If a source does not emit more than the required threshold amount of greenhouse gases on a mass basis, it will not be subject to PSD or Title V, regardless of the CO₂ equivalence of any greenhouse gas emissions. 75 Fed. Reg. at 31,514, 31,522.

V. EPA FULLY CONSIDERED AND REASONABLY REJECTED PETITIONERS' ALTERNATIVE ENDANGERMENT APPROACH

Petitioners argue that before exercising her judgment regarding endangerment, the Administrator must quantify risks and various climate metrics, and then, on the basis of these data, establish quantitative decision-making criteria

⁴⁷ EPA was not required to consider such impacts in making the Endangerment Finding. Infra at 108-110.

that distinguish harmful from safe climate change effects. See Ind. Br. 26-27; Tx. Br. 17, 21. They further suggest that even if the Agency completes this empirical task, she can only find endangerment if she can also answer the following question: “How might GHG regulation under CAA Section 202 reduce emissions in a way that would meaningfully address the alleged ‘endangerment’?” Ind. Br. 27; see also Tx. Br. 19.

EPA fully considered and reasonably rejected the approach advocated by Petitioners. Below, we will first explain why EPA was not required to define “endangerment” in the quantitative terms advocated by Petitioners, and then discuss why the statute does not require EPA to include, as part of its endangerment inquiry, analysis and findings as to the extent to which any endangerment can be ameliorated by Section 202 emission standards.

A. EPA Was Not Required to Define “Endangerment” in the Quantitative Terms Advocated by Petitioners.

To begin with, Petitioners’ arguments completely disregard the vast and compelling quantity of empirical data and scientific evidence that EPA *did* analyze and discuss in the Endangerment Finding. In support of its ultimate finding of endangerment, EPA made a wide array of more specific findings related to the impact of elevated atmospheric greenhouse gas concentrations on climate, as well as the associated health and welfare effects of such air pollution and climate change, and the Agency documented the scientific basis for these findings in an

extensive technical support document (“TSD”).⁴⁸ These findings and data are discussed in detail in Part II, supra, but the key point here is that the Endangerment Finding rested on precisely the type of foundation contemplated by Congress in adopting the present version of section 202(a)(1). See 1977 U.S.C.C.A.N. at 1128-29. Properly understood, therefore, Petitioners cannot argue that EPA failed to support the Endangerment Finding with suitable technical data and analysis – it is indisputable that the Agency did so. Rather, they instead appear to contend that EPA also was required to shape these data into quantitative thresholds distinguishing “safe” from “unsafe” levels of climate change before it could find endangerment.

This argument is utterly inconsistent with the Ethyl decision, where the Court was explicit that endangerment is a fact-specific, case-by-case determination, with no minimum threshold for either risk or severity of harm. Ethyl, 541 F.2d at 18-20; see also 74 Fed. Reg. at 66,509; RTC Section 9.3.2 (JA 3971-74). Instead, EPA simply is to judge both the likelihood that harm will occur and the severity of the harm if it were to occur; varying combinations of risk and harm can amount to endangerment. Ethyl, 541 F.2d at 18-20. The Court stressed

⁴⁸ See 74 Fed. Reg. at 66,517-19 (describing the evidence showing that the concentration of six greenhouse gases is the primary driver of current and projected climate change), 66,523-36 (summarizing effects on health and welfare); see also Am. Elec. Power v. Connecticut, 131 S. Ct. 2527, 2532-33 (2011) (noting these and related findings).

that in reviewing the Administrator's endangerment determination "we will not demand rigorous step-by-step proof of cause and effect" and will uphold the determination as long as it is "rationally justified." Id. at 28.

Petitioners' description of this aspect of Ethyl is mistaken and incomplete. Petitioners suggest that the Court only upheld the endangerment finding in Ethyl because the Agency supposedly conducted an analysis that demonstrated in a quantitative fashion that the challenged fuel additive standards would lower airborne exposures in a way that would help keep blood lead levels in a "safe" range. Ind. Br. 25. By contrast, Petitioners argue, EPA's approach here was flawed because it involved a more "qualitative" analysis. Id. at 26. However, upon examination, the distinction Petitioners posit between this case and the cited portion of Ethyl simply does not exist.

As the Court in Ethyl noted, EPA *initially* attempted to develop an equation "to predict a person's blood lead level as a direct function of the air lead concentration to which he was exposed," which could "then be used to find a 'safe' air lead concentration to avoid elevated blood levels." Ethyl, 541 F.2d at 56. However, EPA later "abandoned" this "attempt to *quantify* a safe level of exposure" due to technical complications "and settled on its current, *more qualitative*, approach to the evidence." Id. (emphasis added). The analysis the Court upheld was therefore "much more modest in scope," id., and, in the end, was

a qualitative judgment based on review of a variety of studies analyzing the effects of airborne exposure to and ingestion of lead. *Id.* at 55-56. Thus, while there certainly was a significant empirical aspect to EPA's analysis in Ethyl (as there was in this case as well), EPA's ultimate use of these data was, in the Court's own words, essentially qualitative in nature, and the Court upheld that approach as sufficient even under the prior version of the statute.⁴⁹

Furthermore, this Court has more recently repeatedly held that it is reasonable for EPA to base health and welfare-related findings in analogous contexts under the CAA and other environmental statutes on qualitative rather than quantitative information.⁵⁰ In sum, EPA does not need to quantify the myriad possible combinations of risk of harm and severity of harm, covering the very wide range of relevant climate and environmental circumstances, that would *not* constitute endangerment before it may make a fully rational judgment that the specific facts and circumstances here *do* in fact amount to endangerment.⁵¹

⁴⁹ As discussed below, the Court's analysis was based on the risk from airborne lead, not the reduction in risk that the fuel control would achieve.

⁵⁰ See Am. Farm Bureau Fed'n v. EPA, 559 F.3d 512, 535 (D.C. Cir. 2009); Cement Kiln Recycling Coal. v. EPA, 493 F.3d 207, 223 (D.C. Cir. 2007); Am. Trucking Ass'ns v. EPA, 283 F.3d at 369; see also, e.g., Catawba County v. EPA, 571 F.3d 20, 39-40 (D.C. Cir. 2009) (upholding use of a qualitative weight of evidence approach in applying the contribution test to NAAQS designations).

⁵¹ Cf. Lead Indus., 647 F.2d at 1161-62 (in determining the ambient level of an air pollutant that is requisite to protect public health with an adequate margin of safety, under CAA Section 109, 42 U.S.C. § 7409, EPA is not required to first

Imposing the burden of proof on EPA that Petitioners advocate would also conflict with the Supreme Court's admonition in Massachusetts that EPA cannot decline to make an endangerment finding merely because there is "some residual uncertainty." Massachusetts, 549 U.S. at 534. Instead, only uncertainty that is "so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming" could justify such inaction.

Also unavailing is the Non-State Amici's reference to Industrial Union Department, AFL-CIO v. American Petroleum Inst., 448 U.S. 607, 645 (1980), and a subsequent decision of this Court citing that case. See Brief of Amici Curiae In Support of Petitioners ("Non-State Amicus Br.") at 13-14. Most importantly, the plurality in Industrial Union stressed that, regardless of any problems with the particular analysis in front of it, in general the agency has just the sort of discretion to implement a preventative approach in making a threshold determination of risk that this Court articulated in Ethyl, free of the empirical constraints advocated by Petitioners. See Industrial Union, 448 U.S. at 655-56 (explaining, inter alia, that a threshold determination of risk "is not a mathematical straitjacket," the agency "has no duty to calculate the exact probability of harm," and it "is not required to support its finding that a significant risk exists with anything approaching scientific certainty"). The Court further stressed that the agency has "some leeway where its

define a protective ambient level and then determine a margin of safety from that point).

findings must be made on the frontiers of scientific knowledge” and “so long as [the agency’s findings] are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection.” *Id.* at 656; *see also, e.g., Nat’l Maritime Safety Ass’n v. OSHA*, No. 09-1050, 2011 WL 2417109, at *3, *5 (D.C. Cir. June 17, 2011) (following this aspect of *Industrial Union* and applying a similar deferential standard of review to OSHA rules for shipping).

For all of these reasons, as well as the reasons discussed in Part I, *supra*, EPA was not required to define endangerment in the empirical terms advocated by Petitioners.

B. The Extent to Which the Vehicle Rule Will Ameliorate Climate Change is Irrelevant to the Endangerment Finding.

In making the Endangerment Finding, EPA correctly rejected the suggestion that the Agency cannot make an affirmative endangerment finding unless it also finds that regulatory control measures “would prevent at least a substantial part of the danger from the global climate change at which the regulation is aimed.” 74 Fed. Reg. at 66,507; *see Ind. Br.* 13-14, 28-29. Indeed, in *Massachusetts*, the Supreme Court rejected essentially the very argument Petitioners advance. *See Massachusetts*, 549 U.S. at 533 (characterizing “effective” voluntary measures as having “nothing to do with whether greenhouse gas emissions contribute to climate

change”), 534 (characterizing the effectiveness and appropriateness of greenhouse gas emission standards for motor vehicles as “irrelevant” to the endangerment finding).

The approach followed by EPA is consistent with the structure of Section 202(a). First, Congress separated the criteria governing the endangerment and contribution findings from the factors governing the establishment of emission standards. See 74 Fed. Reg. at 66,507; see also 42 U.S.C. § 7521(a)(1)&(2). After EPA makes a positive endangerment finding under Section 202(a)(1), issues associated with the cost and availability of controls are relevant to the subsequent setting of emission standards, as expressly provided for in Section 202(a)(2). See 42 U.S.C. § 7521(a)(2). Congress’ express reference to cost and technology in Section 202(a)(2) reinforces the absence of any similar factor in Section 202(a)(1). See Whitman v. American Trucking Ass’ns, 531 U.S. 457, 466-68 (2001).

In addition, Section 202(a)(1) also specifically directs EPA to consider whether “air pollution” – not motor vehicle emissions – may reasonably be anticipated to present an “endangerment to public health or welfare.” 42 U.S.C. § 7521(a)(1). Thus, the first and most important statutory inquiry for EPA – whether the “air pollution” (the atmospheric concentration of six greenhouse gases) may present an “endangerment” to public health or welfare – has no relationship to the origins of this air pollution. See 74 Fed. Reg. at 66,505-06. Rather, the source of

these emissions is only relevant to the second part of EPA's inquiry, whether motor vehicle emissions "cause or contribute" to the air pollution the Administrator has judged may reasonably be anticipated to endanger. Even in that part of Section 202(a)(1), however, there is no suggestion that Congress intended EPA to analyze the extent or adequacy of future emission *controls* as part of the initial "cause or contribute" finding. This is another strong indication from the structure of Section 202(a) that Congress did not intend the efficacy of potential control strategies, nor any other issue unrelated to the public health and welfare impacts of the air pollution under consideration, to be a relevant factor for EPA to have considered in the Endangerment Finding.

It is also worth noting that this separation between the endangerment determination and the setting of standards is repeated in comparable provisions of the Act, particularly those addressing the establishment of National Ambient Air Quality Standards ("NAAQS") under 42 U.S.C. §§ 7408-09. The "endangerment" finding under Section 108(a)(1), 42 U.S.C. § 7408(a)(1), can lead to the listing of an air pollutant, which leads to the development of "air quality criteria" under Section 108(a)(2), 42 U.S.C. § 7408(a)(2), and then establishment of a NAAQS under Section 109, 42 U.S.C. § 7409, at the level that is "requisite" to protect public health and welfare. Clearly EPA is not required to know the results of the subsequent NAAQS standard-setting in order to make the endangerment finding

under Section 108(a)(1). As with Section 202(a), Congress clearly contemplated that EPA would first determine that an air pollutant contributed to air pollution that endangered public health and welfare, and then that EPA would separately determine the appropriate level (or standard) for that pollutant.

Thus, not only is there nothing in Section 202(a)(1) itself that suggests EPA should consider the efficacy of emission standards as part of the Endangerment Finding, but this separation of endangerment and standard-setting criteria is repeated in comparable contexts throughout the Act, and certainly is not unusual or inappropriate as Petitioners suggest. See also, e.g., CAA Sections 111(b), 213(a)(4), and 231(a), 42 U.S.C. §§ 7411(b), 7547(a)(4), and 7571(a). In sum, it is Petitioners, not EPA, who would distort congressional intent by improperly collapsing these criteria into one decision, in effect revising section 202(a).

Petitioners' reliance on Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 525 (D.C. Cir. 1983), is clearly misplaced. See Ind. Br. 24, 26. In the cited portion of Small Refiner, the Court considered whether the Agency had adequately explained why it imposed a uniform lead-content fuel standard on both small and large refiners when it had proposed to differentiate between the two. Small Refiner did not address the criteria for an endangerment finding (under the then-existing CAA Section 211(c)) at all; rather it addressed the appropriateness of the regulatory controls on small refiners (under then-existing CAA Section 211(g))

many years after the endangerment finding was made. See generally Small Refiner, 705 F.2d at 511-16. The aspect of Small Refiner Petitioners cite thus is irrelevant to this case. This case does not involve the setting of a regulatory standard under Section 202(a)(2), but instead solely involves the finding of whether an endangerment exists under Section 202(a)(1). If Small Refiner provides any pertinent guidance here, it supports EPA's approach because it clearly distinguishes the factors that guide a threshold finding of "endangerment" from those that guide the subsequent establishment of emission standards. See Small Refiner, 705 F.2d at 517.

Petitioners also inappropriately base much of their argument on these points on an obvious misreading of Ethyl, claiming that the Court framed the "relevant issue" in that case "not as whether there was evidence that environmental lead could be a public health hazard, but whether the record 'present[ed] a rational basis for the low-level regulations' that EPA actually adopted." Ind. Br. 24 (quoting Ethyl, 541 F.2d at 38). When read in context, it is clear that this quote is merely a general preface to the Court's substantive review of the EPA action before it. While the petitioners' challenge (and the Court's analysis) in Ethyl focused on the threshold "endangerment" question, that litigation, unlike this case, ultimately constituted a challenge to the substantive fuel additive standards themselves. See Ethyl, 541 F.2d at 10-11 (discussing procedural history and summarizing

Petitioners' challenges). Thus, it is not at all surprising that the Court would introduce its analysis with the type of shorthand quoted by Petitioners, which simply describes the overall nature of the claims before the Court (i.e., a challenge to the lead standards adopted by EPA), and recognizes that the rationality of the endangerment finding was a necessary legal prerequisite for adopting a fuel control under the statutory provision at issue. Petitioners' suggestion that this prefatory snippet from Ethyl was somehow meant to make a showing of regulatory efficacy the sine qua non of all "endangerment" determinations is wholly unjustified.

Petitioners then suggest that the Court's decision in Ethyl precluded EPA from making an endangerment finding unless the Agency first determined that the promulgated restrictions on leaded fuel additives would "fruitfully attack" certain very specific indicia of public health threats from lead that EPA cited to support the endangerment finding. Ind. Br. 25 (citing Ethyl, 541 F.2d at 31 & n.62, 55-65). However, in the cited portion of Ethyl, the Court was specifically addressing arguments that EPA's endangerment finding should only have considered the *incremental* effects on public health of lead from fuel additives, not the *cumulative* effects of such lead combined with lead from other sources. The Court's point was that the incremental approach advocated by Petitioners there was inappropriate in

gauging whether an endangerment was posed by lead-containing fuel additives.⁵²

By contrast, the Court pointed out (in the text cited by Petitioners) that the incremental effect of lead from fuel additives could be a relevant consideration in deciding what *control requirements* might be appropriate to address that endangerment under the pertinent provisions of the Act in place at that time.⁵³

Thus, read in context, the text on which Petitioners rely simply states that while the efficacy of potential regulatory approaches may be relevant to the selection of control requirements under the CAA provision at issue in that case, it has no bearing on the threshold question of whether or not the air pollution endangers public health or welfare. See 74 Fed. Reg. at 66,507-08.

Petitioners fare no better in their attempt to find such a limitation on the endangerment finding in Ethyl's review of EPA's scientific determinations. See Ind. Br. 25 (citing Ethyl, 541 F.2d at 55-65). Petitioners improperly characterize the appendices in Ethyl as addressing how EPA's lead regulation would lower exposures and ameliorate the underlying danger from airborne lead. To the contrary, the appendices deal exclusively with scientific studies concerning the risk

⁵² See Ethyl, 541 F.2d at 30-31 ("Congress understood that the body lead burden is caused by multiple sources" and that "[i]t did not mean for 'endanger' to be measured only in incremental terms").

⁵³ Ethyl, 541 F.2d at 31 n.62 ("While the incremental effect of lead emissions on the total body lead burden is of no practical value in determining whether health is endangered, it is of value, of course, in deciding whether the lead exposure problem can fruitfully be attacked through control of fuel additives."); see also 74 Fed. Reg. at 66,508 (discussing this aspect of Ethyl).

to health from airborne lead, whether inhaled or ingested as dust, such as clinical studies and epidemiologic studies. They do not discuss the control strategy adopted by EPA, the amount of reductions this strategy would achieve, or how these reductions would directly impact public health. The appendices do not give any indication that the Court was reviewing the efficacy of the control strategy in reviewing the science on which the endangerment finding was based. Moreover, as discussed in the preceding section, what is perhaps the most salient point about the appendices in Ethyl is that they reflect this Court's acceptance of a qualitative rather than quantitative analysis in this context.

As EPA aptly pointed out, Petitioners' approach would also be unworkable in practice. It would require EPA, at the time of the endangerment finding, to project the result and effectiveness of "perhaps not one, but even several, future rulemakings stretching over perhaps a decade or decades." 74 Fed. Reg. at 66,508. Contrary to Petitioners' argument, there is nothing in the statute or applicable judicial precedent that supports, let alone compels, this irrational and unwieldy result.

Finally, there is no merit to Petitioners' suggestion that EPA was required to defer making the Endangerment Finding until after undertaking a full analysis of the effect of updated fuel economy standards adopted by the National Highway Traffic Safety Administration ("NHTSA"). Ind. Br. 39-41. Petitioners base this

argument largely on the fact that the NHTSA's authorizing fuel-economy statute (the Energy Policy and Conservation Act, or "EPCA") was updated (by the Energy Independence and Security Act, or "EISA") after the Supreme Court decided Massachusetts. Id. at 40. However, this chronology is irrelevant. Regardless of the amendments Congress may have made to EPCA and when it made them, the operative provision here is Section 202(a)(1) of the Clean Air Act, and that provision has been unchanged since 1977. Under that section, EPA simply had no obligation to consider, as part of the Endangerment Finding, the impact of NHTSA's regulation; instead, issues such as this are governed exclusively by the regulatory criteria established by Congress in Section 202(a)(2), 42 U.S.C. § 7521(a)(2). Massachusetts, 549 U.S. at 532 ("that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities"); see also 74 Fed. Reg. at 66,507-08, 66,544; 75 Fed. Reg. at 49,589-90.⁵⁴

⁵⁴ Petitioners also argue that there should be little practical need for EPA regulation of greenhouse gas emissions from motor vehicles once NHTSA's corporate average fuel economy ("CAFE") standards are updated. Ind. Br. 40. While these issues are legally irrelevant to the Endangerment Finding (for the reasons discussed in the text here), in response to reconsideration petitions raising this issue, the Agency explained that the EPA light-duty vehicle standards will achieve greater overall greenhouse gas reductions than CAFE standards. See 75 Fed. Reg. at 49,590. In fact, EPA's vehicle standards are projected to result in 47 percent greater greenhouse gas reductions than projected under the CAFE standards over the lives of model year 2012-2016 vehicles. 75 Fed. Reg. at 25,490, Table III.F.1-2; 75 Fed. Reg. 25,635-36, Table IV.G.1-4.

For all these reasons, as well as those discussed in Part I, supra, there simply is no support in the statute or applicable case law for Petitioners' suggestion that EPA should take into account the efficacy of emission standards before making an endangerment finding.

VI. EPA PROPERLY DECLINED TO CONSIDER THE ADDITIONAL FACTORS IDENTIFIED BY PETITIONERS AS PART OF ITS ENDANGERMENT ANALYSIS

This Court has long made clear that where a statute directs an agency to consider certain specific factors in making a determination, it is inappropriate for the agency to inject other factors into that analysis. See, e.g., Am. Petroleum Inst. v. EPA, 52 F.3d 1113, 1119-20 (D.C. Cir. 1995); Ethyl Corp. v. EPA, 51 F.3d 1053, 1059-60 (D.C. Cir. 1995); see also National Ass'n of Home Bldrs. v. Defenders of Wildlife, 551 U.S. 644, 663-64 (2007) (list of nine factors for challenged Clean Water Act program approval is "exclusive"). With even more direct relevance to this case, the Supreme Court held that the Administrator's exercise of "judgment" under the endangerment criterion of Section 202(a)(1) must "relate to whether an air pollutant 'cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'" Massachusetts, 549 U.S. at 532-33 (quoting 42 U.S.C. § 7521(a)(1)). The Court intended the Administrator to base her decision on science, not general "policy judgments" divorced from these statutory factors. Massachusetts, 549 U.S. at 533-

34. “Put another way,” the Court added, “the use of the word ‘judgment’ is not a roving license to ignore the statutory text[;]” rather, it is “but a direction to exercise discretion within defined statutory limits.” Id. at 533; see also Am. Elec. Power Co. v. Connecticut, 131 S. Ct. 2527, 2539 (2011) (quoting Massachusetts).

Yet, such a “license to ignore the statutory text” is essentially what Petitioners seek here. Specifically, Petitioners argue that EPA should have added a number of additional, unmentioned factors into the health and welfare endangerment criteria expressly set forth in Section 202(a)(1), namely, the costs and administrative burdens attendant to stationary source regulation of greenhouse gas emissions, the extent to which society can adapt to or mitigate the adverse effects of the endangerment and the extent to which adverse climate effects can be justified in the name of economic progress. These arguments are meritless.

Petitioners’ approach would require EPA to turn a blind eye to air quality degradation and associated health and welfare impacts, so long as the increased pollution could in some sense be justified, tolerated, or adapted to in the name of “progress.” However, as discussed in Part I.B, supra, Congress’ express, overriding purpose in enacting the precautionary endangerment language in Section 202(a)(1) was to enable EPA to take action to avoid adverse impacts to public health and welfare from air pollution before they occur to the extent possible. See also 42 U.S.C. § 7401(b)(1) (general purpose of the Clean Air Act is

“to protect and enhance the quality of the nation’s air resources so as to promote the public health and welfare and the productive capacity of the population”) (emphasis added). For these and other reasons, EPA’s determination that such considerations were irrelevant to the Endangerment Finding represented, at the very least, a “reasonable” construction of the statute that should be upheld under the second step of Chevron,⁵⁵ or, alternatively, a reasonable and well-explained determination under the deferential arbitrary or capricious standard of review.⁵⁶

⁵⁵ The Court need not reach the question of whether the statute unambiguously precludes EPA from considering these factors since, for the reasons discussed herein, at the very least it was reasonable for EPA to deem such factors irrelevant to its analysis. See Entergy Corp. v. Riverkeeper, Inc., 129 S. Ct. 1498, 1505 n.4 (2009) (rejecting argument that a Chevron step one analysis is required in every case since “surely if Congress has directly spoken to an issue then any agency interpretation contradicting what Congress has said would be unreasonable”).

⁵⁶ We acknowledge that statutory questions bearing on the appropriate factors to consider in making an endangerment finding overlap with the Court’s inquiry into whether the challenged action is arbitrary or capricious, which also in part asks whether the agency’s decision “was based on a consideration of the relevant factors.” Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc., 419 U.S. 281, 285 (1974) (citation omitted). This Court has recognized such an overlap in other cases. See, e.g., Am. Fed’n of Gov’t Employees v. Nicholson, 475 F.3d 341, 346 (D.C. Cir. 2007); Nat’l Ass’n of Regulatory Utility Comm’rs v. ICC, 41 F.3d 721, 726-27 (D.C. Cir. 1994). While admittedly a close question, the Court has suggested that analysis under the Chevron framework is more appropriate where (as here) the agency is acting pursuant to a relatively specific statutory provision, see Nat’l Ass’n of Regulatory Utility Comm’rs v. ICC, 41 F.3d at 727, so we have generally structured our argument accordingly. However, EPA believes the same analysis also demonstrates that the Agency’s framework for addressing the endangerment question was neither arbitrary nor capricious.

A. EPA Was Not Required to Consider the Costs and Administrative Burdens Attendant to Stationary Source Regulation of Greenhouse Gas Emissions.

Petitioners argue that EPA was required to consider the possible effect of future regulation of stationary sources – and especially the costs and administrative burdens of such stationary source regulation – since: (1) the Endangerment Finding obligated EPA to issue corresponding emission standards for motor vehicles; (2) issuance of such standards (through the Vehicle Rule) made greenhouse gases “subject to regulation” under the Act; and (3) PSD and Title V permit requirements apply to stationary sources based on their emissions of any pollutant subject to regulation under the Act. See Ind. Br. 20-23; see also Non-State Amicus Br. at 19-31. EPA properly rejected this argument for a variety of reasons. See 75 Fed. Reg. at 49,584-89; 74 Fed. Reg. at 66,515-16.

1. Costs play no role in determining whether the air pollution endangers public health or welfare.

It was at the very least reasonable, under Chevron, for EPA to conclude that it was precluded from considering costs as part of the Endangerment Finding.

First, as discussed in Part I of this brief, supra, the only factors relevant to an endangerment finding under section 202(a)(1) are whether an endangerment to public health or welfare from the relevant air pollution may reasonably be anticipated. Where, as here, the scientific inquiry conducted by EPA indicates that these statutory criteria are met, the Administrator simply does not have the

discretion to decline to make a positive endangerment finding to serve other policy goals. See Massachusetts v. EPA, 549 U.S. at 532-35.

Petitioners suggest that EPA could decline to make an endangerment finding under Section 202 to stave off stationary source regulation under the Act's PSD program, see Ind. Br. 21; see also Non-State Amicus Br. 22-24, but there simply is no basis in Section 202(a)(1) for EPA to do so.⁵⁷ While it is true that the Act makes PSD requirements applicable to newly-regulated pollutants, including greenhouse gases, this reflects a congressional choice wholly independent of the focused health and welfare endangerment criteria established in Section 202(a)(1). See also Am. Elec. Power Corp. v. Connecticut, 131 S. Ct. at 2537 (noting that CAA "speaks directly" to regulation of carbon dioxide emissions from coal-fired power plants). The lack of any statutory support for Petitioners' approach indicates that it should be rejected as inconsistent with clear Congressional intent. At the very least, however, EPA acted reasonably and consistently with the statute in determining that the regulatory effects that may follow an endangerment finding

⁵⁷ Petitioners' citation to EPA's 2008 ANPR, see Ind. Br. 23, is irrelevant. In the cited portion of the ANPR, EPA simply described the potential relationships among various provisions of the Act and the possible statutory implications of a positive endangerment finding. See 73 Fed. Reg. 44,354, 44,418-20 (July 30, 2008). There is nothing in the ANPR that supports Petitioners' argument that EPA believed it could properly consider potential stationary source implications as a factor in making or declining to make an endangerment finding and, in any case, it is EPA's final Endangerment Finding, not the ANPR, that is the focus of judicial review here.

simply are not relevant factors in determining whether an endangerment to health or welfare exists from the air pollution. 74 Fed. Reg. at 66,515.

In this respect, EPA's position is somewhat like the position of the Department of Transportation in DOT v. Public Citizen, 541 U.S. 752 (2004). In that case, the Supreme Court held that where a statute limited DOT's regulatory authority exclusively to safety-related impacts of Mexican truck operations in the United States, the agency was not required by the CAA or the National Environmental Policy Act also to consider the environmental impacts of increased truck traffic that likely would result from promulgation of the safety regulations. Similarly, in this case Section 202(a)(1) simply has no provision that would allow EPA to delay, adjust, or avoid making the Endangerment Finding solely to address concerns about stationary source regulatory implications.

On these points, EPA also aptly analogized an endangerment finding to the setting of a national ambient air quality standard ("NAAQS") under section 109(b) of the Act, 42 U.S.C. § 7409(b), which in pertinent part calls on the Administrator to set standards that in her "judgment" are "requisite to protect the public health." See 74 Fed. Reg. at 66,515-16; see also Part V.B, supra. Like the endangerment provision at issue here, Section 109(b) is focused solely on the public health and welfare impacts of air pollution, and the Supreme Court has made clear that cost-related impacts may not be a factor in making this determination. 74 Fed. Reg. at

66,515-16 (citing Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 466 (2001)).

The Court in Whitman noted that the Act expressly allows costs to be taken into account when EPA takes regulatory action under other provisions, and the Court refused to infer an “authorization to consider costs” into the health-focused NAAQS provision. Whitman, 531 U.S. at 466-67.⁵⁸ For this reason, whatever authority EPA may have to consider costs in other contexts, see Non-State Amicus Br. at 14, the Agency properly declined to consider costs under the endangerment criteria of Section 202(a)(1), since that health and welfare-based provision is similar in relevant respects to the NAAQS provisions at issue in Whitman.

As EPA further explained, the Supreme Court in Whitman also rejected the suggestion that the cost impacts of regulation should be considered part of the public health and welfare inquiry itself. See 74 Fed. Reg. at 66,516. In the portion of Whitman cited by EPA, the Court explained:

Even so, respondents argue, many more factors than air pollution affect public health. In particular, the economic cost of implementing a very stringent standard might produce health losses sufficient to offset the health gains achieved in cleaning the air – for example, by closing down whole industries and thereby impoverishing the workers and consumers dependent upon those industries.

⁵⁸ See also 531 U.S. at 469 (“That factor [costs] is *both* so indirectly related to public health *and* so full of potential for canceling the conclusions drawn from direct health effects that it would surely have been expressly mentioned in §§ 108 and 109 had Congress meant it to be considered.”) (emphasis in original).

Whitman, 531 U.S. at 466. While the Court found this proposition to be “unquestionably true,” it also found that “Congress was unquestionably aware of it,” but chose to address this issue by specifying in various provisions when, and to what extent, costs may properly be considered. Id. at 466-67 (citing Section 202(a)(2), among other provisions, as a specific provision providing for consideration of costs). The Court therefore rejected Petitioners’ attempt to inject costs, implicitly, as a factor to be considered in establishing a NAAQS, a provision focused on public health and welfare effects of air pollution much like Section 202(a)(1). Id. at 467-68. The same reasoning applies here.

Ultimately, as EPA pointed out, Petitioners’ concern about the costs and administrative burdens of stationary source regulation of greenhouse gas emissions pertains to the operation of the statute, not to any choices EPA made or had the authority to make in the Endangerment Finding. 74 Fed. Reg. at 66,515. Except where Congress so specifies (which is not the case here), EPA has no obligation to consider all the interrelationships among various provisions of the Act when taking regulatory action under one. See Small Refiner, 705 F.2d at 516-17 (rejecting contention that EPA needed to consider whether regulation of lead fuel additives under Section 211 of the Act was necessary to meet the lead NAAQS, noting that “when Congress wanted EPA to consider other sections of the Act before regulating fuel additives, it said so”). Simply put, EPA’s authority and

responsibility to make an endangerment finding under Section 202(a) are completely separate from Congress' decision to apply the PSD program to any pollutant regulated under the Act.

EPA further aptly explained in response to comments that while Section 202(a) and the Supreme Court's guidance in Massachusetts gave EPA some discretion to delay making an endangerment finding if the available scientific information is insufficient to allow for an informed exercise of judgment, EPA does not have discretion to delay or avoid such a finding simply to serve policy concerns that have no foundation in the science and health and welfare-based factors set forth in Section 202(a)(1). 74 Fed. Reg. at 66,507-08, 66,515-16. EPA noted that the Endangerment Finding in and of itself did not trigger PSD requirements under then-current EPA policy, and that the Tailoring Rule (which at the time of the Endangerment Finding was only a proposed rule) would address the cost and administrative burden issues associated with the implementation of PSD and Title V permitting requirements for stationary sources of greenhouse gas emissions. Id. at 66,516 n.17; see also 74 Fed. Reg. 18,886, 18,905 n.29 (Apr. 24, 2009) (proposed rule preamble noting that Endangerment Finding itself would not trigger PSD requirements). EPA later reiterated these same points as part of the Reconsideration Denial. See 75 Fed. Reg. at 49,586 (endangerment inquiry under Section 202(a)(1) is limited to questions of public health and welfare stemming

from the air pollution, and does not allow the Agency to decline to issue an endangerment finding “based on concerns with implementing stationary source permitting”). Notably, Petitioners cannot point to any specific provision in Section 202 that would require – or even allow – EPA to alter, defer, or avoid an endangerment finding based on concerns about regulatory impacts on stationary sources.⁵⁹

⁵⁹ The Non-State Amici present a variety of claims concerning EPA’s alleged duty to consider economic impacts and other cost-related issues under Sections 317 and 321 of the Act, 42 U.S.C. §§ 7617, 7621, the Regulatory Flexibility Act (“RFA”), and Executive Order No. 12,866 (“EO 12866”). See Non-State Amicus Br. 7-12. Since no party to this case has raised any claims arising under these authorities, they may not be raised by the Non-State Amici. See D.C. Cir. R. 29(a) (amici may discuss “points not made or adequately elaborated upon in the principal brief” but only as “relevant to the issues before this court”); Edison Elec. Inst. v. OSHA, 849 F.2d 611, 625 (D.C. Cir. 1988) (“issues before the court” is limited to claims advanced by the parties); see also Michel v. Anderson, 14 F.3d 623, 625 (D.C. Cir. 1994) (Court does not entertain arguments presented only by an amicus unless it pertains to the Court’s jurisdiction). In any event, EPA amply considered and discussed all of these issues in the rulemaking record, to the extent they were raised by commenters. See Response to Comments, Sections 11.5 (economic considerations, including CAA § 317 and EO 12,866) (JA 4010-16), 11.7.1 (RFA) (JA 4020-21); see also 74 Fed. Reg. at 66,545 (addressing statutory and executive order reviews including EO 12866 and RFA). No comments filed during the comment period on the Endangerment Finding raised claims based on CAA Section 321; accordingly, any claims premised on that provision are also waived by operation of 42 U.S.C. § 7607(d)(7)(B).

2. EPA also was not required to consider stationary source impacts as part of the Endangerment Finding to avoid allegedly absurd results.

Neither is there merit to Petitioners' related suggestion that EPA needed to consider stationary source impacts as part of the endangerment inquiry in order to avoid "absurd" results related to stationary sources. See, e.g., Ind. Br. 20, 23.

The gist of this argument, which was primarily presented to EPA as part of the reconsideration petitions, is that because EPA invoked the "absurd results" doctrine, in part, to justify the modified PSD and Title V applicability thresholds established in the Tailoring Rule, EPA had an obligation to interpret its "endangerment" authority in Section 202(a)(1) in such a way as to avoid that absurd result. See 75 Fed. Reg. at 49,586-89 (portion of Reconsideration Denial discussing these issues).⁶⁰ In denying those petitions, EPA correctly stressed at the outset that the absurdity that needs to be addressed is not in Section 202(a)(1),⁶¹

⁶⁰ Specifically, Petitioners argue that the absurd results of applying the major stationary source statutory thresholds to greenhouse gases provide "reasons for action or inaction in the statute" that EPA can, if not must, rely on to decline to make an Endangerment Finding under Section 202(a). Ind. Br. 18-19 (quoting Massachusetts, 549 U.S. at 534-35); see also Non-State Amicus Br. 29-32. We note that the discussion of "absurd results" is only one facet of the analysis EPA set forth in conjunction with the Tailoring Rule, and we respectfully refer the Court to the preamble for the Tailoring Rule, 75 Fed. Reg. 31,514 (June 3, 2010), as well as EPA's briefing in No. 10-1073, for a more comprehensive discussion of that rule.

⁶¹ Petitioners erroneously suggest that EPA views the Endangerment Finding as "the root cause of the absurdity," and that the Endangerment Finding "rests on an interpretation of the CAA ... that results in 'absurd' consequences" Ind.

since that provision can be applied in a very straightforward way to determine whether or not atmospheric concentrations of greenhouse gases endanger public health or welfare. See 75 Fed. Reg. at 49,587. There is nothing absurd about regulating mobile source emissions of greenhouse gases under Section 202.

Instead, the Agency explained, the absurdity only arises when the “major emitting facility” quantitative thresholds set forth in Section 169(1) of the Act, 42 U.S.C. § 7479(1), are applied to greenhouse gases. Therefore, EPA’s efforts to address this absurd result through the Tailoring Rule are properly and narrowly focused on the stationary source provisions “where the absurdity originates,” while leaving intact and giving full effect to other provisions of the Act, such as the mobile source provisions in Section 202(a)(1), which are necessary to serve the Act’s goals of promoting public health and welfare, and which are not the cause of the absurdity.

75 Fed. Reg. at 49,586. Whereas the Tailoring Rule reasonably and narrowly resolves the absurdity by phasing-in stationary source regulation of greenhouse gas emissions starting with the largest emitters, Petitioners’ blunt “solution” to the absurdity would indefinitely defer *any* regulation of greenhouse gas emissions from mobile *or* stationary sources. Id. at 49,587. As discussed in the preceding

Br. 20. To the contrary, EPA explained that it is only the major stationary source statutory thresholds that would lead to absurd results if applied immediately to greenhouse gases. EPA did not take the position in the Endangerment Finding or subsequent actions that regulating greenhouse gases generally under the Act, or specifically under Section 202(a), is “absurd.” 75 Fed. Reg. at 49,589.

section, there is nothing in Section 202(a)(1) that allows EPA to alter, defer, or avoid an otherwise-justified endangerment finding based on cost or other concerns unrelated to the science-based judgment of the impacts of air pollution on public health or welfare. EPA therefore correctly concluded that nothing in the Act or extant case law required or even permitted the Agency to pursue such an unwise and unjustified course.

For these reasons, EPA reasonably concluded that the costs and administrative burdens of stationary source regulation of greenhouse gases that may eventually flow from the Endangerment Finding simply were not relevant factors for EPA to consider in making the endangerment determination in the first instance.

B. EPA Was Not Required to Consider the Benefits of Pollution-Causing Activities.

Petitioners also argue that EPA should have considered the extent to which pollution-causing activities have benefitted society as part of the Agency's endangerment analysis. Ind. Br. 35-37. Exactly what Petitioners mean by this is unclear. Nearly *every* pollution-causing activity in the United States can be argued to have *some* social benefit (otherwise there presumably would be scant incentive to engage in the activity), but Congress has chosen to regulate the pollution caused by such activities under the CAA and countless other environmental statutes.

Petitioners may challenge the manner in which EPA considered the air

pollution in this case, but it is nonsensical to suggest that EPA somehow had to weigh all the alleged societal benefits of greenhouse gas-emitting activities before finding that atmospheric greenhouse gas concentrations may reasonably be anticipated to endanger public health and welfare under Section 202. As EPA explained: “The fact that we as a society are better off now than 100 years ago, and that processes that produce greenhouse gases are a large part of this improvement, does not mean that those processes do not have unintended adverse impacts.” 74 Fed. Reg. at 66,516. The very point of Section 202 is that EPA should address these “unintended adverse impacts” as they are manifested in the specific form of air pollution caused or contributed to by motor vehicles. The Agency was not tasked by Congress to engage in a wide-ranging sociological and philosophical exercise to determine whether this air pollution is somehow “worth it.”⁶²

The authority cited by Petitioners is completely inapposite. For example, Petitioners rely on Competitive Enterprise Inst. v. NHTSA, 956 F.2d 321, 327 (D.C. Cir. 1992), noting that this Court required NHTSA to further consider safety impacts when setting fuel economy standards. Ind. Br. 35; see also Non-State Amicus Br. 13. While that point is true, Petitioners overlook that the Court was

⁶² See Ethyl, 541 F.2d at 6 (“It is only recently that we have begun to appreciate the danger posed by unregulated modification of the world around us, and have created watchdog agencies whose task it is to warn us, and protect us, when technological ‘advances’ present dangers unappreciated or unrevealed by their supporters.”).

reviewing a fuel economy standard in light of the statutory criteria for setting such standards and stressed that the statute required NHTSA to consider “feasibility” and the Agency had long interpreted feasibility to include safety. Competitive Enterprise, 956 F.2d at 322. Here, by contrast, the weighing of air pollution detriments against economic and social benefits sought by Petitioners has absolutely no basis in the statutory requirement to make an endangerment determination concerning air pollution, and such an approach would in fact undermine the goals of that provision.

Petitioners also point to this Court’s decision that EPA had to consider both positive and negative health effects from ambient levels of ozone pollution in setting a NAAQS for that pollutant. See Ind. Br. 35 (citing Am. Trucking Ass’n v. EPA, 175 F.3d 1027, 1052 (D.C. Cir. 1999), aff’d in part, reversed in part on other grounds sub nom. Whitman v. Am. Trucking Ass’n, 531 U.S. 457 (2001)). However, Petitioners are not arguing that EPA overlooked any positive effects of greenhouse gas concentrations in the atmosphere; rather, they are arguing that EPA should have (at least in part) simply ignored the negative effects of this pollution based on perceived social benefits from the activities that initially gave rise to the pollution-causing emissions.

For all the foregoing reasons, there simply is no justification for supposing that Congress, sub silentio, intended to block EPA from making an appropriate

endangerment determination under Section 202 until after the Agency balanced the adverse health and welfare effects of air pollution against the claimed social benefits of the activities giving rise to that pollution.

C. EPA Was Not Required to Consider the Extent to Which Society Might Adapt to or Mitigate the Effects of Pollution.

Petitioners also miss the mark in arguing that EPA was required to consider society's ability to adapt to, or mitigate, the adverse effects of climate change before determining endangerment. See Ind. Br. 37-39; Tx. Br. 21-22. Petitioners provide no specific examples of such adaptation and mitigation, but presumably they are referring generally to social, scientific, technological, or natural *responses* to climate change that will better enable humans to live with those effects *after* they have already occurred. (Adaptation generally refers to planning and actions to ameliorate present and anticipated harms, such as developing crops that are more drought-resistant. Mitigation generally refers to actions to reduce emissions of greenhouse gases.)

In response to comments on these issues, EPA began by acknowledging that adaptation and mitigation is "a strong focal area of scientists and policy makers, including EPA." 74 Fed. Reg. at 66,512. Indeed, to the extent Petitioners are challenging the autonomous ability of natural ecosystems to blunt the impacts of climate change, EPA's analysis took such adaptation into account to the extent "the literature on which [EPA's TSD] relies already uses assumptions about

autonomous adaptation when projecting the future effects of climate change.” Id. That said, because adaptation and mitigation are otherwise “*responses to* endangerment,” the Agency “determined that they are outside the scope of the endangerment analysis.” Id.

EPA’s approach to these issues reflects, at the very least, a reasonable construction of the statute. To begin with, were EPA to venture beyond the scientific record regarding adaptation of natural ecosystems to fully consider how society might adapt to or mitigate the effects of climate change, EPA would have to make judgments going far beyond “the kind of scientific or technical judgments that Congress envisioned for the endangerment test.” 74 Fed. Reg. at 66,514. For example, EPA would have to formulate some estimate, going perhaps decades into the future, as to “the political actions likely to be taken by various local, State, and Federal governments” as well as “judgments on the business or other decisions that are likely to be made by companies or other organizations, or the changes in personal behavior that may be occasioned by the adverse impacts of air pollution.” Id. This would both “dramatically increase the complexity of the issues before EPA,” 74 Fed. Reg. at 66,513, and “would take EPA far away from the kind of judgments Congress envisioned for the endangerment test.” Id. at 66,514.⁶³ The

⁶³ EPA set forth several reasons for not considering adaptation and mitigation as part of the endangerment determination; it did not, as Petitioners suggest, decline to do so *solely* because such an undertaking would be complex. Tx. Br. 22.

endangerment analysis, EPA reasoned, “involves evaluating the risks to public health and welfare from the air pollution if we do not take action to address it.” Id. Adaptation and mitigation, on the other hand, “address an important but different issue – how much risk will remain assuming some projection of how people and society will respond to the threat.” Id.

EPA’s approach is consistent with the structure and intent of Section 202. As discussed above, Section 202(a) creates a two-part decision-making approach, separating the endangerment criteria in Section 202(a)(1) from the standard-setting criteria in Section 202(a)(2). See supra Parts I, V.B. In this way, the structure of the Act clearly supports the Administrator’s approach of separating the analysis of whether an endangerment to public health or welfare “may reasonably be anticipated,” 42 U.S.C. § 7521(a)(1), from the entirely separate inquiry as to what the proper shape and content of the regulatory response to this endangerment should be.

Further, when Congress amended the Act in 1977 to add the present “endangerment” language to Section 202, its overriding, express purpose was “[t]o emphasize the preventive or precautionary nature of the act, i.e., to assure that regulatory action can effectively *prevent* harm *before* it occurs” 1977 U.S.C.C.A.N. at 1127 (emphasis added). Congress intended EPA to take actions that would “assure that the health of susceptible individuals, as well as healthy

adults, will be encompassed in the term ‘public health.’” Id. at 1128. Petitioners’ argument thus stands in direct conflict with this purpose, since it would re-direct EPA’s focus from prevention to after-the-fact remediation and accommodation, and would undercut the goal of protecting even the most vulnerable members of society from harm.

For all these reasons, EPA reasonably determined that adaptation and mitigation (other than the natural adaptation of ecosystems discussed above) generally are not factors the Agency was required to consider as part of its endangerment analysis.

VII. PETITIONERS’ ARGUMENTS CONCERNING REVIEW BY THE SCIENCE ADVISORY BOARD HAVE BEEN WAIVED AND ARE, IN ANY EVENT, MERITLESS

The Science Advisory Board (“SAB”) was established by Congress in 1978. See 42 U.S.C. § 4365; see also 1977 U.S.C.C.A.N. 3283-99. The SAB’s members are appointed by the EPA Administrator, and its general purpose is to provide EPA with advice on certain types of scientific decisions. Of particular relevance to Petitioners’ claims here is 42 U.S.C. § 4365(c)(1), which, inter alia, directs EPA to provide the SAB with “any proposed criteria document, standard, limitation, or regulation” under the Clean Air Act and other statutes. Upon review, the SAB may (but is not required to) provide scientific advice to the Administrator regarding the document in question. Id. § 4365(c)(2).

In this case, EPA did not submit the proposed Endangerment Finding to the SAB for review. No party submitted comments on the proposed Endangerment Finding raising the statutory argument made by Petitioners,⁶⁴ but some parties did raise this argument as part of their petitions for reconsideration. In its denial of those petitions, EPA explained that this argument was both procedurally defective (because it could have been raised during the comment period on the proposed Endangerment Finding) and substantively defective (because, among other things, the Endangerment Finding is not a “criteria document, standard, limitation, or regulation” within the meaning of 42 U.S.C. § 4365(c)(1)). See RTP 3-7 (JA 4842-44).

In their brief, Industry Petitioners argue, with little explanation, that EPA violated 42 U.S.C. § 4365 by failing to submit the proposed Endangerment Finding for SAB review. This argument must fail.

A. Any Challenges Regarding SAB Review Have Been Waived.

Under Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), parties may not seek judicial review of issues they failed to raise with “reasonable specificity” during the comment period. The only exception to this rule is if it was “impracticable” to raise the issue during that comment period; even in that case, a

⁶⁴ One commenter did generally suggest that EPA consult with the SAB regarding regulatory options that would follow the Endangerment Finding but no comments raised the statutory argument advanced by Petitioners herein.

party must first present the issue through a reconsideration petition to EPA, demonstrating why the issue could not have been raised and why it is “of central relevance to the outcome of the rule.” Id. This Court enforces these requirements “strictly.” NRDC v. EPA, 571 F.3d 1245, 1259 (D.C. Cir. 2009); Motor & Equip. Mfrs. Ass’n v. Nichols, 142 F.3d 449, 462 (D.C. Cir. 1998). In this case, EPA made an express finding in denying the reconsideration petitions that the SAB review issue could have been raised during the public comment period, and Petitioners have not contested this finding in their brief. Accordingly, Petitioners’ present challenge on this issue should be denied on this basis alone.

Curiously, although Petitioners do not challenge the application here of Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), they do contend that Section 307(d)(8), 42 U.S.C. § 7607(d)(8), which discusses the general standard of review applicable to procedural claims, does not apply to their SAB review claim. Ind. Br. 60. To begin with, this argument is irrelevant. Since Petitioners, by their silence on the failure-to-comment issue, concede that their SAB review claim is completely barred as a threshold matter by operation of Section 307(d)(7)(B), it makes no difference what standard of review might apply to the claim under Section 307(d)(8) were it allowed to proceed.

In any event, Petitioners’ Section 307(d)(8) argument is incorrect. The gist of that argument is that Section 307(d)(8) only applies to claims based on

procedural requirements established by the Clean Air Act itself, not on provisions such as 42 U.S.C. § 4365. Ind. Br. 60. However, in American Petroleum Institute v. Costle, 665 F.2d 1176, 1187-89 (D.C. Cir. 1981), this Court expressly applied the requirements of Section 307(d)(7)&(8), 42 U.S.C. § 7607(d)(7)&(8), to an SAB review claim similar to that presented by Petitioners here. Petitioners do not address, let alone distinguish, this aspect of American Petroleum and their reliance on Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 522 (D.C. Cir. 1983), is wholly misplaced. The cited aspect of Small Refiner simply noted that Section 307(d)(8)'s standard of review was essentially meant to be something of a counterweight to Congress' decision to add "new procedural protections" in certain provisions of Section 307(d). Nothing in the cited discussion suggests that the Court viewed application of the standard of review in Section 307(d)(8) to be limited to claims based on procedural requirements created by Section 307(d) itself.

For all the foregoing reasons, Petitioners' SAB review claim is barred by the requirements of Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B).

B. Petitioners' SAB Review Claim Is, in Any Event, Meritless.

Even if the Court were to reach the merits of Petitioners' SAB review claim it should deny that claim on its merits.

EPA posited two reasons why the SAB review requirement does not apply here. First, the Agency explained that the proposed Endangerment Finding was not a “criteria document, standard, limitation, or regulation” within the meaning of that provision. See RTP 3-7 (JA 4842-44). Second, EPA noted that this review requirement applies only when a proposal is submitted to other federal agencies for “formal” inter-agency review, and EPA believed that the type of inter-agency review conducted under EO 12,866, which was conducted here, was by contrast “informal.” Id. Since Petitioners do not expressly contest either of these conclusions in their brief, they are conceded. See, e.g., American Wildlands v. Kempthorne, 530 F.3d 991, 1001 (D.C. Cir. 2008) (parties must fully develop arguments in opening brief and arguments made for first time in reply brief are waived).⁶⁵

In light of EPA's reasonable and uncontested conclusion that the SAB review requirement in 42 U.S.C. § 4365(c)(1) does not apply here, Petitioners'

⁶⁵ Petitioners do refer, without explanation, to the Endangerment Finding as a “rule” but this cannot be equated to a legal argument challenging EPA's conclusion that the Endangerment Finding is not a “criteria document, standard, limitation, or regulation” within the meaning of 42 U.S.C. § 4365(c)(1). In any event, EPA adequately explained in the record its basis for concluding that the Endangerment Finding is not a regulation. See RTC 11-7 (JA 4010).

arguments as to the extent to which SAB review may or may not have satisfied Section 307(d)(8)'s standard of review for procedural claims, Ind. Br. 60-61, simply are irrelevant. Simply put, if there is no actual procedural violation, it is irrelevant how "serious" the consequences of such a violation are alleged to be. However, even if the Court were to reach those issues, EPA reasonably explained why such review would not, in fact, undermine the scientific basis for the Endangerment Finding, which was based on multiple and comprehensive scientific assessments by distinguished American and international scientific bodies. See RTP 3-7 (JA 4842-44)

For all the foregoing reasons, Petitioners' claims regarding SAB review should either be dismissed by operation of CAA Section 307(d)(7)(B), 42 U.S.C. § 7607 (d)(7)(B), or denied on the merits.

CONCLUSION

For all the foregoing reasons, EPA properly found that air pollution in the form of atmospheric concentrations of six greenhouse gases may reasonably be anticipated to endanger public health or welfare and that emissions from motor vehicles cause or contribute to this air pollution. No more was required. Accordingly, the petitions for review should be denied.

Respectfully submitted,

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STATUTORY ADDENDUM

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§ 7408. Air quality criteria and control techniques**(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants**

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the

Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990,¹ and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on—

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and

¹ See Codification note below.

local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

(i) programs for improved public transit;
(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II of this chapter, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.²

²So in original. The period probably should be a semicolon.

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of—

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

(July 14, 1955, ch. 360, title I, §108, as added Pub. L. 91-604, §4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95-95, title I, §§104, 105, title IV, §401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101-549, title I, §§108(a)-(c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105-362, title XV, §1501(b), Nov. 10, 1998, 112 Stat. 3294.)

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original "enactment of the Clean Air Act Amendments of 1989", and was translated as meaning the date of the enactment of Pub. L. 101-549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c-3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91-604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105-362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating

achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101-549, §108(a), inserted first sentence and struck out former first sentence which read as follows: "The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title."

Subsec. (f)(1). Pub. L. 101-549, §108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101-549, §108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101-549, §111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101-549, §108(o), added subsec. (g).

Subsec. (h). Pub. L. 101-549, §108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95-95, §401(a), substituted "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" for "which in his judgment has an adverse effect on public health or welfare".

Subsec. (b)(1). Pub. L. 95-95, §104(a), substituted "cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology" for "technology and costs of emission control".

Subsec. (c). Pub. L. 95-95, §104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95-95, §105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Ad-

ministrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(July 14, 1955, ch. 360, title I, § 109, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95-95, title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c-4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91-604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c), Pub. L. 95-95, § 106(b), added subsec. (c).

Subsec. (d), Pub. L. 95-95, § 106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see

section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

ROLE OF SECONDARY STANDARDS

Pub. L. 101-549, title VIII, § 817, Nov. 15, 1990, 104 Stat. 2697, provided that:

“(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

“(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

“(2) estimate welfare and environmental costs incurred as a result of such effects;

“(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

“(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

“(5) estimate the costs and other impacts of meeting secondary standards; and

“(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

“(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

“(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

“(3) There are authorized to be appropriated such sums as are necessary to carry out this section.”

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Admin-

modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

(July 14, 1955, ch. 360, title I, § 193, as added Pub. L. 101-549, title I, § 108(i), Nov. 15, 1990, 104 Stat. 2469.)

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) IN GENERAL.—(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) REVISED STANDARDS FOR HEAVY DUTY TRUCKS.—(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health

and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) REBUILDING PRACTICES.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) MOTORCYCLES.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1)¹ of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreason-

¹ See References in Text note below.

able risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) ONBOARD VAPOR RECOVERY.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall

be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5),¹ regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable

Pub. L. 95-95, title III, § 305(e), Aug. 7, 1977, 91 Stat. 776; Pub. L. 101-549, title I, §§ 107(d), 108(i), Nov. 15, 1990, 104 Stat. 2464, 2467.)

CODIFICATION

Section was formerly classified to section 1857g of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, § 108(i), inserted “subject to section 7607(d) of this title” after “regulations”.

Subsec. (d). Pub. L. 101-549, § 107(d), added subsec. (d).
1977—Subsec. (a). Pub. L. 95-95 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted “Administrator” for “Secretary” and “Environmental Protection Agency” for “Department of Health, Education, and Welfare”.

Subsec. (b). Pub. L. 91-604, § 3(b)(2), substituted “Environmental Protection Agency” for “Public Health Service” and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91-604, § 15(c)(2), substituted “Administrator” for “Secretary”.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DISADVANTAGED BUSINESS CONCERNS; USE OF QUOTAS PROHIBITED

Title X of Pub. L. 101-549 provided that:

“SEC. 1001. DISADVANTAGED BUSINESS CONCERNS.

“(a) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 [Pub. L. 101-549, see Tables for classification] which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns.

“(b) DEFINITION.—

“(1)(A) For purposes of subsection (a), the term ‘disadvantaged business concern’ means a concern—

“(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly traded company, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

“(ii) the management and daily business operations of which are controlled by such individuals.

“(B)(i) A for-profit business concern is presumed to be a disadvantaged business concern for purposes of subsection (a) if it is at least 51 percent owned by, or in the case of a concern which is a publicly traded

company at least 51 percent of the stock of the company is owned by, one or more individuals who are members of the following groups:

“(I) Black Americans.

“(II) Hispanic Americans.

“(III) Native Americans.

“(IV) Asian Americans.

“(V) Women.

“(VI) Disabled Americans.

“(ii) The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals referred to in that clause with respect to that business concern are not experiencing impediments to establishing or developing such concern as a result of the individual’s identification as a member of a group specified in that clause.

“(C) The following institutions are presumed to be disadvantaged business concerns for purposes of subsection (a):

“(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

“(ii) Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision Act (20 U.S.C. 1221 et seq.)).

“(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

“(D) A joint venture may be considered to be a disadvantaged business concern under subsection (a), notwithstanding the size of such joint venture, if—

“(i) a party to the joint venture is a disadvantaged business concern; and

“(ii) that party owns at least 51 percent of the joint venture.

A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

“(E) Nothing in this paragraph shall prohibit any member of a racial or ethnic group that is not listed in subparagraph (B)(i) from establishing that they have been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

“SEC. 1002. USE OF QUOTAS PROHIBITED.—Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility under section 1001.”

§ 7602. Definitions

When used in this chapter—

(a) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(b) The term “air pollution control agency” means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design,

equipment, work practice or operational standard promulgated under this chapter.¹

(l) The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term "primary standard attainment date" means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term "delayed compliance order" means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term "schedule and timetable of compliance" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this chapter, the term "applicable implementation plan" means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.

(r) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(s) VOC.—The term "VOC" means volatile organic compound, as defined by the Administrator.

(t) PM-10.—The term "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG.—The term "NAAQS" means national ambient air quality standard. The term "CTG" means a Control Technique Guideline published by the Administrator under section 7408 of this title.

(v) NO_x.—The term "NO_x" means oxides of nitrogen.

(w) CO.—The term "CO" means carbon monoxide.

(x) SMALL SOURCE.—The term "small source" means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

¹ So in original.

(y) **FEDERAL IMPLEMENTATION PLAN.**—The term “Federal implementation plan” means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) **STATIONARY SOURCE.**—The term “stationary source” means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

(July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Pub. L. 88-206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89-272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91-604, § 15(a)(1), (c)(1), Dec. 31, 1970, 84 Stat. 1710, 1713; Pub. L. 95-95, title II, § 218(c), title III, § 301, Aug. 7, 1977, 91 Stat. 761, 769; Pub. L. 95-190, § 14(a)(76), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title I, §§ 101(d)(4), 107(a), (b), 108(j), 109(b), title III, § 302(e), title VII, § 709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

CODIFICATION

Section was formerly classified to section 1857h of this title.

PRIOR PROVISIONS

Provisions similar to those in subssecs. (b) and (d) of this section were contained in a section 1857e of this title, act July 14, 1955, ch. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1990—Subsec. (b)(1) to (3). Pub. L. 101-549, § 107(a)(1), (2), struck out “or” at end of par. (3) and substituted periods for semicolons at end of pars. (1) to (3).

Subsec. (b)(5). Pub. L. 101-549, § 107(a)(3), added par. (5).

Subsec. (g). Pub. L. 101-549, § 108(j)(2), inserted at end “Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ‘air pollutant’ is used.”

Subsec. (h). Pub. L. 101-549, § 109(b), inserted before period at end “, whether caused by transformation, conversion, or combination with other air pollutants”.

Subsec. (k). Pub. L. 101-549, § 303(e), inserted before period at end “, and any design, equipment, work practice or operational standard promulgated under this chapter.”

Subsec. (q). Pub. L. 101-549, § 101(d)(4), added subsec. (q).

Subsec. (r). Pub. L. 101-549, § 107(b), added subsec. (r).

Subsecs. (s) to (y). Pub. L. 101-549, § 108(j)(1), added subsecs. (s) to (y).

Subsec. (z). Pub. L. 101-549, § 709, added subsec. (z).

1977—Subsec. (d). Pub. L. 95-95, § 218(c), inserted “and includes the Commonwealth of the Northern Mariana Islands” after “American Samoa”.

Subsec. (e). Pub. L. 95-190 substituted “individual, corporation” for “individual corporation”.

Pub. L. 95-95, § 301(b), expanded definition of “person” to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

Subsec. (g). Pub. L. 95-95, § 301(c), expanded definition of “air pollutant” so as, expressly, to include physical, chemical, biological, and radioactive substances or matter emitted into or otherwise entering the ambient air.

Subsecs. (i) to (p). Pub. L. 95-95, § 301(a), added subsecs. (i) to (p).

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(1), substituted definition of “Administrator” as meaning Administrator of the Environmental Protection Agency for definition of “Secretary” as meaning Secretary of Health, Education, and Welfare.

Subsecs. (g), (h). Pub. L. 91-604, § 15(a)(1), added subsec. (g) defining “air pollutant”, redesignated former subsec. (g) as (h) and substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

§ 7603. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(July 14, 1955, ch. 360, title III, § 303, as added Pub. L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1705; amended Pub. L. 95-95, title III, § 302(a), Aug. 7, 1977, 91 Stat. 770; Pub. L. 101-549, title VII, § 704, Nov. 15, 1990, 104 Stat. 2681.)

CODIFICATION

Section was formerly classified to section 1857h-1 of this title.

lishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to⁵ the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

⁵ So in original. The word "to" probably should not appear.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management

and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of

title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section⁶ 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 360, title III, §307, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 92-157, title III, §302(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93-319, §6(c), June 22, 1974, 88 Stat. 259; Pub. L. 95-95, title III, §§303(d), 305(a), (c), (f)-(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub. L. 95-190, §14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title I, §§108(p), 110(5), title III, §302(g), (h), title VII, §§702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681-2684.)

REFERENCES IN TEXT

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101-549, title II, §230(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101-549, title II, §230(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original "section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, §3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I of this chapter, referred to in subsec. (d)(1)(J), was in the original "subtitle C of title I", and was translated as reading "part C of title I" to reflect the probable intent of Congress, because title I does not contain subtitles.

CODIFICATION

In subsec. (h), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedures Act" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h-5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91-604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly §14, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89-272, renumbered section 310 by Pub. L. 90-148, and renumbered section 317 by Pub. L. 91-604, and is set out as a Short Title note under section 7401 of this title.

⁶ So in original. Probably should be "sections".

regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978.

(Pub. L. 95-155, § 7, Nov. 8, 1977, 91 Stat. 1259.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4365. Science Advisory Board

(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

(b) Membership; Chairman; meetings; qualifications of members

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 et seq.], the Noise Control Act [42 U.S.C. 4901 et seq.], the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C. 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the

adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.

In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) Member committees and investigative panels; establishment; chairmanship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(f) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

(g) Consultation and coordination with Scientific Advisory Panel

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of title 7.

(Pub. L. 95-155, § 8, Nov. 8, 1977, 91 Stat. 1260; Pub. L. 96-569, § 3, Dec. 22, 1980, 94 Stat. 3337; Pub. L. 103-437, § 15(o), Nov. 2, 1994, 108 Stat. 4593; Pub. L. 104-66, title II, § 2021(k)(3), Dec. 21, 1995, 109 Stat. 728.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (c)(1), is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For

**RESPONDENTS' CERTIFICATE OF COMPLIANCE WITH
WORD LIMITATION AND TYPEFACE REQUIREMENTS**

Respondents United States Environmental Protection Agency ("EPA") and Lisa P. Jackson, Administrator of EPA, hereby represent that this corrected final brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and the briefing format adopted by the Court for this case because it contains 29,624 words, as counted by Microsoft Word, excluding the signature block and the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and that it complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

DATED: November 14, 2011

/s/ Angeline Purdy
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing corrected Final Brief for Respondents have been served through the Court's CM/ECF system on all registered counsel this 14th day of November, 2011.

DATED: November 14, 2011

/s/ Angeline Purdy
Counsel for Respondents

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 4/19/2017 3:58:59 PM
To: Levine, MaryEllen [levine.maryellen@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: **Attorney Client / Ex. 5**
Attachments: AX-17-000-7542.pdf

In case this hasn't reached you yet.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Veney, Carla
Sent: Wednesday, April 19, 2017 10:02 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Shaw, Carla <Shaw.Carla@epa.gov>
Subject: Emailing - AX-17-000-7542.pdf

FYI

Message

From: Tomiak, Robert [tomiaak.robert@epa.gov]
Sent: 3/3/2017 6:59:36 PM
To: Davis, Patrick [davis.patrick@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]
CC: Dunham, Sarah [Dunham.Sarah@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Stalcup, Dana [Stalcup.Dana@epa.gov]; Benton, Donald [benton.donald@epa.gov]
Subject: RE: Denver Chamber of Commerce meeting notes.docx
Attachments: Denver Chamber of Commerce meeting notes v2.docx

To Tom's point, I've attached some edits for your consideration, along with hyperlinks to some of the references we discussed.

Rob

Rob Tomiak
Director, Office of Federal Activities
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

From: Davis, Patrick
Sent: Friday, March 03, 2017 1:44 PM
To: Benton, Donald <benton.donald@epa.gov>; Stalcup, Dana <Stalcup.Dana@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Tomiak, Robert <tomiaak.robert@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: Denver Chamber of Commerce meeting notes.docx

Thank you for participating in the briefing for Denver Chamber of Commerce leaders today. Attached are the meeting notes for your use.

Thanks,
Patrick Davis

March 3, 2017

Meeting Report: Denver Chamber of Commerce leaders

EPA Participants:

Don Benton, Senior White House Advisor

Patrick Davis, Senior Advisor

Dana Stalcup, OLEM

Tom Tyler, OP

Rob Tomiak, OECA

Denver Chamber Participants:

Andrew Graham, Clinic Services

David Schlatter, Commercial Real Estate

Michelle McKinney, University of Colorado and incoming Chamber Board President

Libby Ary, South Metro Denver Chamber

Courtney Loehfelm, Arapahoe County Community College

Peter Moore, Vital for Colorado

Shelby Schacher, Farmer's Insurance

Issues of concern to the Denver Chamber participants:

A-C / Deliberative Process / Ex. 5

A-C / Deliberative Process / Ex. 5

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 4/21/2017 8:26:54 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]
CC: Zenick, Elliott [Zenick.Elliott@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]; Page, Steve [Page.Steve@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Subject:
Attachments: **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

Justin – would you like me to get hard copy to you or Ryan?

Lorie

Message

From: Freire, JP [Freire.JP@epa.gov]
Sent: 4/25/2017 11:52:40 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: Draft reply: Hatch Act allegation

Folks,

Deliberative Process / Ex. 5

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: Personal Phone / Ex. 6

Begin forwarded message:

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: April 25, 2017 at 7:50:38 PM EDT
To: "Freire, JP" <Freire.JP@epa.gov>
Cc: "Ferguson, Lincoln" <ferguson.lincoln@epa.gov>
Subject: RE: Draft reply: Hatch Act allegation

Ok. Put this out.

From: Freire, JP
Sent: Tuesday, April 25, 2017 7:45 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: Draft reply: Hatch Act allegation

Deliberative Process / Ex. 5

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: Personal Phone / Ex. 6

Begin forwarded message:

From: "Bowman, Liz" <Bowman.Liz@epa.gov>
Date: April 25, 2017 at 6:54:59 PM EDT

To: "Freire, JP" <Freire.JP@epa.gov>

Subject: FW: Hatch Act allegation

I think its best if you handle this one

From: Alex Guillen [<mailto:aguillen@politico.com>]

Sent: Tuesday, April 25, 2017 6:50 PM

To: Press <Press@epa.gov>

Subject: Hatch Act allegation

Hi all, please let me know if EPA has any comment on Sen. Whitehouse's letter asking OSC to investigate this matter.

Thanks,
Alex

From: Davidson, Richard (Whitehouse)

[mailto:Richard_Davidson@whitehouse.senate.gov]

Sent: Tuesday, April 25, 2017 6:12 PM

To: Davidson, Richard (Whitehouse) <Richard_Davidson@whitehouse.senate.gov>

Subject: RELEASE: Whitehouse Files Hatch Act Complaint Over Pruitt Participation in OK GOP Fundraiser

FOR IMMEDIATE RELEASE

April 25, 2017

**Contact: Rich Davidson
(202) 228-6291 (press office)**

Whitehouse Files Hatch Act Complaint Over Pruitt Participation in Oklahoma GOP Fundraiser

Washington, DC – U.S. Senator Sheldon Whitehouse, a member of the Senate Environment and Public Works Committee, filed a complaint today with the U.S. Office of Special Counsel concerning a potential violation on the part Environmental Protection Agency Administrator Scott Pruitt of the Hatch Act, the federal law limiting political activities of federal employees. The complaint stems from an invitation to a May 5 Oklahoma Republican Party fundraiser distributed this week, where Pruitt is set to deliver the keynote address. The invitation makes numerous references to Pruitt's status as Administrator and his actions thus far—a brand of political promotion prohibited by the Hatch Act.

In the complaint, Whitehouse writes, “the unmistakable impression one receives from the May 5 invitation is that by purchasing a ticket or agreeing to sponsor the OKGOP Gala, the attendee will have special access to federal employee discussing official actions already taken, and to be taken in the future. This is clearly impermissible political activity under the Hatch Act.”

The Hatch Act, officially known as the Act to Prevent Pernicious Political Activity, bars executive branch employees from using their “official authority or influence for the purpose of interfering with or affecting the result of an election,” including “activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.” Specifically,

the law prohibits executive employees from allowing their “official title to be used in connection with fundraising activities.”

“Make sure to purchase your Gala tickets so you don’t miss out on Administrator Pruitt’s future plans and how he will continue to Drain the Swamp!” the invitation reads. “This is a once in a lifetime opportunity, so buy your tickets before they sell out!”

In addition to a full investigation, Whitehouse requests that Pruitt not be allowed to attend the fundraiser.

“In light of fact that the OKGOP’s promotional materials have already promised donors special access to a federal employee in exchange for a political contribution, anything short of prohibiting his attendance will not change, in the public’s perception, that the OKGOP’s Gala is a ‘pay-to-play’ event with a federal Cabinet official,” the complaint reads.

Full text of the complaint is below. A PDF copy is available [here](#).

April 25, 2017

The Honorable Carolyn Lerner
Special Counsel
Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner:

Pursuant to 5 U.S.C. § 1216, I submit the following as a complaint and respectfully request the Office of Special Counsel (OSC) investigate whether Scott Pruitt, Administrator of the Environmental Protection Agency (EPA), violated the Hatch Act by agreeing to appear as the Keynote Speaker at the Oklahoma Republican Party (OKGOP) “Gala” on May 5, 2017. Administrator Pruitt’s featured participation in an event to raise money for the Oklahoma Republican Party is likely political activity prohibited by the Act.

Factual Background

On February 17, 2017, Scott Pruitt was sworn in as Administrator of the EPA. Pruitt was nominated for the position while serving his second term as the Republican Attorney General of the State of Oklahoma. Prior to that, Pruitt served as a Republican member of the Oklahoma State Senate from 1998 to 2006.

On April 24, 2017, it was first reported by *Politico* that Pruitt would be the “Keynote Speaker” at the May 5, 2017, OKGOP Gala.^[1] The invitation, attached as Exhibit A,^[2] included the following text:

The OKGOP is proud to announce that EPA Administrator Scott Pruitt will be the Keynote Speaker at this year’s Oklahoma Republican Party Gala!

During his short tenure as EPA Administrator, Pruitt has overseen the rollback of the Waters of the US rule, called for an exit from the Paris Climate Agreement, and championed a return to EPA “originalism.”

You do not want to miss Pruitt at this year’s OKGOP Gala, as he discusses his plans to slash regulations, bring back jobs to Oklahoma, and decrease the size of the EPA!

Make sure to purchase your Gala tickets so you don’t miss out on Administrator Pruitt’s future plans and how he will continue to Drain the Swamp! This is a once in a lifetime opportunity, so buy your tickets before they sell out!

The invitation appears to include a photograph of Pruitt being sworn in as Administrator by Supreme Court Justice Samuel Alito,^[3] and contains the link “Click Here to Buy Gala Tickets!” The electronic version also contains an image noting “Sponsorship Levels” ranging from \$2,000 to \$5,000, and setting the price of the dinner at \$100, with a “VIP reception” costing an additional \$50.

Pruitt has a long track record of making direct political solicitations, participating in political fundraising events, and chairing the boards of political organizations like the section 527 Republican Attorney Generals Association (RAGA) and its associated 501(c)(4) organization, the Rule of Law Defense Fund (RLDF). These activities frequently involved industries he now regulates as EPA Administrator.

Devon Energy and Koch Industries are regulated by EPA and have supported the OKGOP, Scott Pruitt, and RAGA. During the 2010 and 2014 election cycles, Devon Energy and Koch Industries maxed out to Pruitt’s campaign.^[4] From 2014 to 2016, Pruitt was a Member of the RAGA Executive Committee when it raised \$530,000 from Koch Industries and \$125,000 from Devon Energy.^[5] Koch Industries has contributed \$5,000 to the OKGOP.^[6] J. Larry Nichols, co-founder and director of Devon Energy from 1971 to 2016, has given the OKGOP \$30,500.^[7]

^[1] <https://www.politicopro.com/energy/whiteboard/2017/04/pruitt-to-headline-oklahoma-gop-gala-086639>.

^[2] An electronic version of the invitation is available at: <http://mailchi.mp/okgop/scott-pruitt-confirmed-to-speak-at-okgop-convention>.

^[3] Compare Exhibit A with Dave Boyer, “Scott Pruitt sworn in as EPA administrator,” *The Washington Times*, February 17, 2017, available at <http://www.washingtontimes.com/news/2017/feb/17/scott-pruitt-sworn-in-as-epa-administrator/> (accessed on April 25, 2017).

^[4] National Institute on Money in State Politics data available at <https://www.followthemoney.org>.

^[5] Center for Media and Democracy, “RAGA Fossil Fuel Funders 2014-2016,” January 6, 2017.

^[6] National Institute on Money in State Politics data available at <https://www.followthemoney.org>.

^[7] National Institute on Money in State Politics data available at <https://www.followthemoney.org>.

RLDF, a 501(c)(4) organization, does not have to disclose its donors but public reporting has shown that it received at least \$175,000 from Freedom Partners, a 501(c)(6) organization run by several Koch Industries executives.^[8] As recently as February 28, 2017, Pruitt was a speaker at the RAGA major donors dinner.^[9]

Thanks to Pulitzer Prize winning reporting by the *New York Times*, the public knows that contributing to Pruitt's political causes is a good investment. For example, in 2011, he took a letter written by Devon Energy, put it on Oklahoma Attorney General letterhead, signed it, and sent it to EPA pleading Devon's case. According to the *New York Times*' analysis of the 1,016 words that Devon proposed, only 37 were changed.^[10]

During his confirmation process, several Senators, including me, sought further information from Pruitt about his political and financial connections in an effort to determine what conflicts of interest he would bring to his role as Administrator.^[11] Pruitt stonewalled those efforts.^[12] As a result, we now have an Administrator with potentially wide-ranging conflicts of interest related to his federal position. As discussed in greater detail below, the facts related to the May 5 OKGOP Gala appear to be a continuation of Pruitt's troubling conflation of official and political activity, now in violation of federal law.

Legal Analysis

The Hatch Act places limitations on the ability of executive branch employees to participate in political activities. An executive branch employee is prohibited from using "his official authority or influence for the purpose of interfering with or affecting the result of an election."^[13] That prohibition extends to an employee "[u]sing his or her official title while participating in political activity,"^[14] where "political activity" is defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."^[15]

^[8] Elena Schor, "Democrats press EPA pick Pruitt on energy sector ties: A nonprofit he helps lead accepted \$175,000 from a central arm of the Koch brothers' network," *Politico*, December 27, 2016, available at <http://www.politico.com/story/2016/12/congress-democrats-epa-pruitt-232989>.

^[9] "Senators Question Timing of EPA Action Following Industry Meeting," April 14, 2017, available at <https://www.whitehouse.senate.gov/imo/media/doc/2017-04-14%20Letter%20to%20Pruitt%20on%20ICR.pdf>.

^[10] Eric Lipton, "Energy Firms in Secretive Alliance With Attorneys General," *New York Times*, December 6, 2014, available at <https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>.

^[11] EPW Members Call on Pruitt to Reveal Connections to Secretive Group Coordinating EPA Challenges, available at <https://www.whitehouse.senate.gov/news/release/epw-members-call-on-pruitt-to-reveal-connections-to-secretive-group-coordinating-epa-challenges>, December 28, 2016; Questions for Oklahoma Attorney General Scott Pruitt from Senator Tom Carper, available at https://www.carper.senate.gov/public/_cache/files/2a41152c-395c-4b3f-864e-630474ba1ddc/senator-carper-preliminary-questions-for-epa-nominee-scott-pruitt.pdf, December 28, 2016.

^[12] Whitehouse Slams Pruitt's Evasive Responses to Post-Hearing Questions, available at <https://www.whitehouse.senate.gov/news/release/whitehouse-slams-pruitts-evasive-responses-to-post-hearing-questions>, January 26, 2017.

^[13] 5 U.S.C. § 7323(a)(1)

^[14] 5 C.F.R. § 734.302(b)(1)

^[15] 5 C.F.R. § 734.101

More specifically, an employee may not “[a]llow his or her official title to be used in connection with fundraising activities.”^[16] According to OSC guidance, an employee “is allowed to give a speech or keynote address at a political fundraiser, as long as he or she is not on duty, appears only in his or her personal capacity, and does not solicit political contributions.”^[17] Furthermore,

[a]n employee’s name may appear on an invitation to a political fundraiser as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions. . . . However, the employee’s official title may not appear on invitations to any political fundraiser, except that an employee who is ordinarily addressed using a general term of address, such as “The Honorable,” may use or permit the use of that term of address for such purposes.^[18]

The May 5 invitation contains representations that on their face make out a violation of the Hatch Act.

- <!--[if !supportLists]--><!--[endif]-->His official title appears, or is referenced, at least three times.
- <!--[if !supportLists]--><!--[endif]-->The invitation is for a political fundraiser, with sponsorship levels ranging from \$2,000 to \$5,000, dinner for \$100, and special “VIP” access for an additional \$50.
- <!--[if !supportLists]--><!--[endif]-->The invitation uses Pruitt’s official actions to promote the Gala, noting how “[d]uring his short tenure as EPA Administrator, Pruitt has overseen the rollback of the Waters of the US rule, called for an exit from the Paris Climate Agreement, and championed a return to EPA ‘originalism.’”
- <!--[if !supportLists]--><!--[endif]-->The invitation directly ties Pruitt’s speech to his official activities, stating that he will discuss “his plans to slash regulations, bring back jobs to Oklahoma, and decrease the size of the EPA.”
- <!--[if !supportLists]--><!--[endif]-->The invitation explicitly connects purchasing Gala tickets to the opportunity to hear about official government activities, like Pruitt’s “future plans and how he will continue to Drain the Swamp!” calling the Gala a “once in a lifetime opportunity.”

In short, the unmistakable impression one receives from the May 5 invitation is that by purchasing a ticket or agreeing to sponsor the OKGOP Gala, the attendee will have special access to a federal employee discussing official actions already taken, and to be taken in the future. This is clearly impermissible political activity under the Hatch Act.

Other considerations

Pruitt has been Administrator of the EPA for over two months and should be presumed to have been advised of his responsibilities under the Hatch Act. He is not new to the world of Oklahoma politics and political fundraising. He should

^[16] 5 C.F.R. § 734.303

^[17] “Hatch Act: Federal FAQs,” Office of Special Counsel, <https://osc.gov/Pages/HatchAct-FAQs.aspx> (accessed April 25, 2017).

^[18] 5 C.F.R. § 734.208(d) Example 2.

have known that the OKGOP Gala was a political fundraiser and that his participation as a keynote speaker would be used by the Oklahoma Republican Party to promote the event and increase donations. That, combined with Pruitt's long history of political solicitation from industries he now regulates, and stonewalling of congressional and other public inquiries into his ties to those industries, suggests a pattern of behavior that warrants close scrutiny by your office.

Conclusion

The Hatch Act protects the integrity and impartiality of the federal government by preventing officials like Administrator Pruitt from engaging in political activity in their official capacities. The facts here appear to be a blatant violation of the Act. As an initial matter, I urge you to take quick action to ameliorate some of the harm already done. The OKGOP Gala has not yet occurred, so Administrator Pruitt should be instructed not to attend. In light of the fact that the OKGOP's promotional materials have already promised donors special access to a federal employee in exchange for a political contribution, anything short of prohibiting his attendance will not change, in the public's perception, that the OKGOP's Gala is a "pay-to-play" event with a federal Cabinet official.

Prompt action to prevent further harm is necessary here but not sufficient. I further urge you to conduct a full investigation into the facts and circumstances of this matter and take all appropriate disciplinary action against Administrator Pruitt.

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Message

From: Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Sent: 3/30/2017 8:48:17 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: Two-Week Deadlines Document
Attachments: Weekly Report 3-30-17.docx

Flag: Flag for follow up

Hi David and Justin,

Attached is the two-week deadlines document for your convenience. Please let Aditi and I know if there are any topics you would like short briefings on by Monday morning—that way we can begin to schedule the short briefings for Wednesday.

Please let me know if you have any questions or concerns.

Have a great night!
Shaun

Shaun R. Trudeau
Attorney-Advisor
Operational Special Assistant to the Principal Deputy
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202.564.5127

Message

From: Hornbuckle, Wyn (OPA) [Wyn.Hornbuckle@usdoj.gov]
Sent: 4/28/2017 5:23:13 PM
To: Freire, JP [Freire.JP@epa.gov]; Hornbuckle, Wyn (OPA) [Wyn.Hornbuckle@usdoj.gov]
CC: Valentine, Julia [Valentine.Julia@epa.gov]; Prior, Ian (OPA) [Ian.Prior@usdoj.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Graham, Amy [graham.amy@epa.gov]
Subject: RE: CPP decision

If you can hold for 5 mins, I may have a quick update

From: Freire, JP [mailto:Freire.JP@epa.gov]
Sent: Friday, April 28, 2017 1:23 PM
To: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>
Cc: Valentine, Julia <Valentine.Julia@epa.gov>; Prior, Ian (OPA) <Ian.Prior@usdoj.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Graham, Amy <graham.amy@epa.gov>
Subject: Re: CPP decision

Got it. Adding others so they have it. Guys, this is attributable to me.

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: Personal Phone / Ex. 6

On Apr 28, 2017, at 1:17 PM, Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov> wrote:

JP – Can you work with this going forward?

Deliberative Process / Ex. 5

From: Freire, JP [mailto:Freire.JP@epa.gov]
Sent: Friday, April 28, 2017 12:43 PM
To: Valentine, Julia <Valentine.Julia@epa.gov>; Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Millett, John <Millett.John@epa.gov>; Senn, John <Senn.John@epa.gov>
Subject: RE: CPP decision

Wyn, I'm at 202-309-6781. Absolutely agree we need to coordinate, just want to touch base with you on this one thing.

From: Valentine, Julia
Sent: Friday, April 28, 2017 12:41 PM
To: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Millett, John <Millett.John@epa.gov>; Senn, John <Senn.John@epa.gov>; Freire, JP <Freire.JP@epa.gov>
Subject: RE: CPP decision

Hi Wyn,

I'm adding JP Freire to this chain.

From: Hornbuckle, Wyn (OPA) [<mailto:Wyn.Hornbuckle@usdoj.gov>]
Sent: Friday, April 28, 2017 12:38 PM
To: Millett, John <Millett.John@epa.gov>; Senn, John <Senn.John@epa.gov>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Valentine, Julia <Valentine.Julia@epa.gov>
Subject: RE: CPP decision

Jahan's email or phone?

From: Millett, John [<mailto:Millett.John@epa.gov>]
Sent: Friday, April 28, 2017 12:17 PM
To: Senn, John <Senn.John@epa.gov>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Valentine, Julia <Valentine.Julia@epa.gov>
Subject: Re: CPP decision

Here's the statement I've seen -- recommend connecting with Jahan

Deliberative Process / Ex. 5

John Millett
202.510.1822

On Apr 28, 2017, at 11:50 AM, Senn, John <Senn.John@epa.gov> wrote:

Probably John Millett from our air office and Julia Valentine from our press shop—cc'ing both of them on this email. Not sure the degree to which our counsel's office has been involved with language, but John & Julia should know.

Thanks,
John

From: Hornbuckle, Wyn (OPA) [<mailto:Wyn.Hornbuckle@usdoj.gov>]
Sent: Friday, April 28, 2017 11:21 AM
To: Senn, John <Senn.John@epa.gov>
Subject: CPP decision

John – Can you remind me real quick who I should coordinate with on CPP ruling, and phone and email address if you have it?

Message

From: Downing, Donna [Downing.Donna@epa.gov]
Sent: 4/4/2017 8:04:51 PM
To: Shapiro, Mike [Shapiro.Mike@epa.gov]; Peck, Gregory [Peck.Gregory@epa.gov]; Loop, Travis [Loop.Travis@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Frithsen, Jeff [Frithsen.Jeff@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Stokely, Peter [Stokely.Peter@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Donald.e.jackson@usace.army.mil
CC: FertikEdgerton, Rachel [FertikEdgerton.Rachel@epa.gov]; Borum, Denis [Borum.Denis@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Lousberg, Macara [Lousberg.Macara@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]; Lamont, Douglas W SES (US) [douglas.w.lamont2.civ@mail.mil]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; Cindy Barger [cindy.s.barger.civ@mail.mil]; McGartland, Al [McGartland.Al@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Washington, Valerie [Washington.Valerie@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]
Subject: RE: WOTUS Call in **Conference Line/Code / Ex. 6**
Attachments: Agenda -- WOTUS 5 April 2017 v2.docx

Attached please find the agenda for tomorrow's 10am meeting on WOTUS.

Donna Downing

-----Original Appointment-----

From: Shapiro, Mike

Sent: Tuesday, January 17, 2017 7:47 AM

To: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Breen, Barry; Cheatham, Reggie; Donald.e.jackson@usace.army.mil

Cc: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Lousberg, Macara; Theis, Joseph; Bahk, Benjamin; Pollins, Mark; Evalenko, Sandy; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Cindy Barger; McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele

Subject: WOTUS Call in **Conference Line/Code / Ex. 6**

When: Wednesday, April 05, 2017 10:00 AM-10:45 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 3233 WJCE

**AGENDA
WOTUS MEETING**

Wednesday, April 5, 2017

10:00-10:45am

WJC EAST 3233

Telecom:

Conference Line/Code / Ex. 6

Deliberative Process / Ex. 5

Message

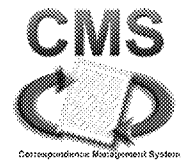
From: Hope, Brian [Hope.Brian@epa.gov]
on behalf of EPAExecSec [EPAExecSec@epa.gov]
Sent: 4/10/2017 8:10:30 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Graham, Amy [graham.amy@epa.gov]
Subject: Daily Reading File - April 10, 2017
Attachments: Daily Reading File.4.10.17.pdf



Correspondence Management System

Control Number: AX-17-000-7325

Printing Date: April 10, 2017 03:35:19



Citizen Information

Citizen/Originator: Williams, Bruce

Organization: Local Government Advisory Committee
Address: 3310 Market Street, Camp Hill, PA 17011

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-17-000-7325 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 24, 2017 **# of Extensions:** 0
Letter Date: Apr 4, 2017 **Received Date:** Apr 10, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AD-Administrator **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Requesting support to advocate for maintaining EPA Chesapeake Bay Program funding at the current level of \$73 million
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OARM-OROM-FACMD - Federal Advisory Committee Management Division
OCIR - Office of Congressional and Intergovernmental Relations
OW - Office of Water -- Immediate Office
R3 - Region 3 - Immediate Office
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Brigitte Moritz	OEX	OCFO	Apr 10, 2017	Apr 24, 2017	N/A
Instruction: AD-Prepare draft response for the Administrator's signature					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

CHAIR
The Hon. Bruce R. Williams
Maryland



VICE CHAIR – At-Large
The Hon. Daniel Chao
District of Columbia

VICE CHAIR – MD
The Hon. Kelly Porter
Maryland

VICE CHAIR – PA
The Hon. Ann Simonetti
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VICE CHAIR – VA
The Hon. Richard A. Baugh
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The Hon. James Barnhart
West Virginia

The Hon. Ruby A. Brabo
Virginia

The Hon. Sheila Finlayson
Maryland

The Hon. J. Richard Gray
Pennsylvania

The Hon. Penelope A. Gross
Virginia

Larry Land
Virginia

The Hon. Leo Lutz
Pennsylvania

The Hon. Andria McClellan
Virginia

The Hon. Brienne K. Nadeau
District of Columbia

The Hon. Donovan Phillips Jr.
Delaware

The Hon. John V. Thomas
Pennsylvania

James Wheeler
Pennsylvania

The Hon. Robert C. Willey
Maryland

April 4, 2017

Chesapeake Executive Council:

We are writing to request your support in advocating for maintaining EPA Chesapeake Bay Program funding at the current level of \$73 million. As noted in your 2016 Resolution to Support Local Government Engagement (2016 Resolution), "citizens desire clean water in their local streams and rivers and local, state and federal elected officials are responsible to their constituents to help maintain the quality of life that clean water provides."

In your 2016 Resolution you also noted that "current levels of public funding and private investment are insufficient to carry out conservation and restoration activities that achieve local healthy streams, rivers and a vibrant Chesapeake Bay." Additionally, you committed to pursue opportunities to increase public funding and private investment for local implementation of conservation and restoration activities that achieve local healthy streams, rivers and a vibrant Chesapeake Bay, particularly activities that reduce pollutants from stormwater runoff and address the problem of recurrent flooding.

The elimination of funding for the EPA Chesapeake Bay Program, as proposed in the President's 2018 Budget Blueprint, will limit our ability to protect healthy waters, put a halt to many local water protection and restoration initiatives, and threaten the scientific integrity of the restoration effort.

Local governments throughout the watershed are investing millions of dollars to protect and restore local waters. Bay Program funding and other federal programs such as the Clean Water and Drinking Water State Revolving Funds, along with state funding, are vital to our success.

We know you share our understanding that a healthy Chesapeake Bay is an economic engine for our region and a critical resource for our nation and hope that we can count on your support of our efforts.

Sincerely,

The Honorable Bruce Williams
Chair, Local Government Advisory Committee

cc. Nick DiPasquale, EPA Chesapeake Bay Program



Mary S. Gottis, LGAC Coordinator
3310 Market Street, Suite A | Camp Hill, PA 17011 | 717-475-8390 | mgottis@allianceforthebay.org

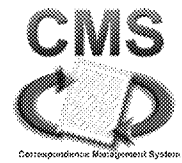




Correspondence Management System

Control Number: AX-17-000-7321

Printing Date: April 10, 2017 03:08:05



Citizen Information

Citizen/Originator: Sherk, Stephen L

Organization: American Refining Group, Inc.
Address: 77 North Kendall Avenue, Bradford, PA 16701

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7321
Status: Pending
Due Date: Apr 25, 2017
Letter Date: Mar 27, 2017
Addressee: AD-Administrator
Contact Type: LTR (Letter)
Signature: DX-Direct Reply
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Alternate Number: dx
Closed Date: N/A
of Extensions: 0
Received Date: Apr 10, 2017
Addressee Org: EPA
Priority Code: Normal
Signature Date: N/A
Subject: DRF - Renewable Fuel Standard: Small Refinery Hardship Relief
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs
R3 - Region 3 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Apr 10, 2017	Apr 25, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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AMERICAN REFINING GROUP, INC.

REC-111

2017 APR 10 AM 11:58

OFFICE OF THE
EXECUTIVE SECRETARIAT

March 27, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20004

Re: Renewable Fuel Standard: Small Refinery Hardship Relief

American Refining Group, Inc. (ARG) a small refinery located in Bradford, Pennsylvania is writing you in concern for "hardship relief" it is seeking from the United States Environmental Protection Agency (USEPA). ARG petitioned the USEPA for "hardship relief" from the Renewable Fuel Standard (RFS) for the 2016 compliance year based on the disproportionate economic hardship the refinery would suffer if it was required to buy credits (called "renewable identification numbers" or "RINs") for compliance. ARG submitted its petition on January 31, 2017 and it has not received word on its "hardship relief" with the March 31, 2017 compliance date only four days ahead.

RFS compliance is one of the company's largest operating expenses. For 2016, as reported in the company's petition to EPA, ARG would have a cost of compliance from buying RINs of approximately \$3million, compared to total profits of only \$3 million. To put this in perspective, ARG would be paying more for RFS compliance than it pays for electric and water combined. To pay for RINs, the company has had to freeze hiring, stop making investments in its refinery, and has deferred non-critical maintenance. Without capital investments, contractors will not be hired, affecting the local community.

Our President has indicated that this is the type of job-crushing regulatory program that he intends to see fixed. Fortunately, it is within EPA's purview to grant relief now, before more jobs are lost and the local economy in Bradford, Pennsylvania is further harmed. For these reasons, we urge you to review the merits of ARG's petition and not to issue an adverse ruling, which could have the effect of costing American jobs and harming the local economy further.

Therefore, granting 2016 hardship relief will not result in less renewable fuel blending, it will simply avoid a substantial expense for a company unable to afford it. Renewable fuel has already been blended with the transportation fuel produced by ARG in 2016.

At a minimum, EPA should temporarily delay the compliance deadline to review the merits of ARG's petition. It is less than a week until the compliance deadline and the cost of

March 27, 2017

Page 2

RINs has increased in anticipation of the deadline. EPA is only required to "act" on ARG's petition at this time. 40 CFR 80.1442(e)(2)(ii). It may "act" on ARG's petition by temporarily delaying the compliance deadline while it reviews the merits of the petition.

Thank you for considering our request.

Sincerely,
American Refining Group, Inc.



Stephen L. Sherk
Director, Environmental Affairs

Cc: The Honorable Glenn Thompson
United States Congressman, Pennsylvania's 5th District
124 Cannon HOB
Washington, DC 20515

 **AMERICAN REFINING GROUP, INC.**

77 North Kendall Avenue • Bradford, PA 16701
Office (814) 368-1200 Fax (814) 368-1335
Web: <http://www.amref.com> eMail: arg@amref.com

Page 2 of 2

ED_002401_00001567-00005



Correspondence Management System

Control Number: AX-17-000-7326

Printing Date: April 10, 2017 03:47:19



Citizen Information

Citizen/Originator: Drusina, Edward

Organization: International Boundary and Water Commission United States and Mexico
Address: 4171 N. Mesa Street - Building C, El Paso, TX 79902

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7326
Status: For Your Information
Due Date: N/A
Letter Date: Mar 28, 2017
Addressee: Dianne Jacob
Alternate Number: N/A
Closed Date: N/A
of Extensions: 0
Received Date: Apr 10, 2017
Addressee Org: San Diego County Board of Supervisors
Contact Type: LTR (Letter)
Signature: SNR-Signature Not Required
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Trans boundary Sewage Problem Affecting San Diego County
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OITA - Office of International and Tribal Affairs
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office
Priority Code: Normal
Signature Date: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

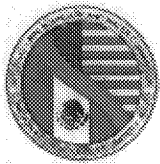
Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Jacqueline Leavy	OEX	R9	Apr 10, 2017

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Forward control to R9	Apr 10, 2017



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

March 28, 2017

2017 APR 10 AM 11:33

OFFICE OF THE
EXECUTIVE SECRETARIAT

The Honorable Dianne Jacob
San Diego County Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, CA 92101-2470

Dear Chairwoman Jacob:

With regard to your March 16, 2017 letter regarding the February 2017 event that resulted in sewage contamination in the Tijuana River Valley and nearby coastal areas, I share your concern about the recurring nature of the transboundary sewage problem affecting San Diego County.

As you are aware, the International Boundary and Water Commission (IBWC) in the 1990s constructed an international wastewater treatment plant to capture and treat a portion of Tijuana wastewater to U.S. standards. This has greatly improved sanitation conditions in the Tijuana River Valley and nearby coastal waters over the last two decades. However, as evidenced by the February spill and other events, there is an ongoing problem of sewage flows that are not able to be captured and treated at the wastewater treatment plants in both countries.

The IBWC certainly has a large role to play in addressing this problem. The IBWC investigation into the February spill referenced in your letter will contain recommendations on how to improve communications about transboundary spills as well as proposals to prevent them from occurring in the first place.

The Commission is also working through various binational work groups established under a 2015 IBWC agreement, Minute No. 320, "General Framework for Binational Cooperation on Transboundary Issues in the Tijuana River Basin," to address priority issues of water quality, sediment, and trash. One part of this effort is to develop recommendations so that, during and after rainfall, there is an improved notification process and operational reliability of a pumping station in Mexico that prevents sewage from flowing into the United States.

However, the IBWC is only one of the agencies that must be a part of the solution. Tijuana faces various challenges that contribute to the transboundary sanitation problem including a growing population, homes built in areas without infrastructure, aging sanitation infrastructure, and limited funding. The entities with authority to support construction and maintenance of sanitation infrastructure in Mexico have a key role to play in the solution, including potentially the Border Environment Cooperation Commission/ North American Development Bank (the entities established following NAFTA to support development of environmental infrastructure along the U.S.-Mexico border), U.S. Environmental Protection Agency, and of course local, state, and federal agencies in Mexico.

I look forward to working with authorities in San Diego County to ensure appropriate response to any transboundary spills that may occur and welcome your support and input for implementation of solutions.

Sincerely,



Edward Drusina, P.E.
Commissioner

cc: Governor Edmund G. Brown, Jr.
State of California
c/o State Capitol, Suite 1173
Sacramento, CA 95814

Secretary of State Rex W. Tillerson
United States Department of State
2201 C St. NW, 7th Floor
Washington, DC 20520

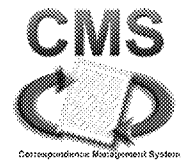
Administrator Scott Pruitt
United States Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460



Correspondence Management System

Control Number: AX-17-000-7330

Printing Date: April 10, 2017 02:45:08



Citizen Information

Citizen/Originator: McInnes, Michael S.

Organization: Tri-State Generation and Transmission Association, Inc.

Address: P.O. Box 33695, Denver, CO 80233-0695

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7330

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Mar 31, 2017

Received Date: Apr 10, 2017

Addressee: POTUS-President of the United States

Addressee Org: White House

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: DRF - Presidential Executive Order on Promoting Energy Independence and Economic Growth

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: N/A

CC: Kristien Knapp - AO-IO

OPA - Office of Public Affairs

R8 - Region 8 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Jacqueline Leavy	OEX	OAR	Apr 10, 2017

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Forward control to OAR	Apr 10, 2017



TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

HEADQUARTERS: P.O. BOX 33695 DENVER, COLORADO 80233-0695 303-452-6111

March 31, 2017

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

On behalf of Tri-State Generation and Transmission Association, Inc. and the 43 member systems we serve, I want to thank you for signing *Presidential Executive Order on Promoting Energy Independence and Economic Growth*. We appreciate your support of the clean and safe development of the nation's energy resources and your understanding of how federal regulations, like the Environmental Protection Agency's Clean Power Plan, can negatively impact these efforts. We agree there is a better way to achieve environmental goals.

Tri-State is the wholesale power supplier, operating on a not-for-profit basis, to 43 electric cooperatives and public power districts that serve more than one million consumers throughout nearly 200,000 square-miles of Colorado, Nebraska, New Mexico and Wyoming. We believe that affordable and reliable power, responsibly generated and delivered, is the lifeblood of the farms, ranches, small towns and businesses that our members serve.

As a cooperative, Tri-State's operations are cost-based and all the expense of complying with regulations are passed on to our members, a fact the EPA ignored when crafting the Clean Power Plan and why Tri-State and other cooperatives were active in the rulemaking process and challenged the rule in court. Since it was proposed, Tri-State has argued the Clean Power Plan was unlawful, unworkable, and should be abandoned by the EPA. We argued that the stakes are too high to risk implementing legally flawed, poorly conceived regulations that have the real potential to harm our members and rural communities across the West.

If the Clean Power Plan is ultimately rescinded – or significantly revised to address our concerns – it would tremendously benefit our members, which rely on fossil fuel generation as a source of affordable and reliable power. Our employees that work at our plants and coal mines, as well as the communities in which they live, would also gain a measure of reprieve.

The executive order also addresses other federal regulations and policies we have expressed concerns with either during the rulemaking processes or through legal challenges. Specifically, we support modifications to methodologies used under the National Environmental Policy Act (NEPA), which currently calls for unreasonable requirements for transmission lines and mining facilities. We also support your order ending the controversial coal leasing moratorium put in

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

A Touchstone Energy Cooperative



CRAIG STATION
P.O. BOX 1307
CRAIG, CO 81626-1307
970-824-4411

ESCALANTE STATION
P.O. BOX 577
PREWITT, NM 87045
505-876-2271

NUCLA STATION
P.O. BOX 698
NUCLA, CO 81424-0698
970-864-7316

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The President
March 31, 2017
Page 2

place by the previous administration. Tri-State looks forward to working constructively with your administration to help craft workable and effective regulations.

In the meantime, Tri-State will continue to invest in the efficiency of our facilities, maintain best practices and diversify our generation portfolio. In 2016, 26 percent of the energy delivered by the association and our member systems to their members/consumers came from renewable resources, but fossil fuels remain an important part of the association's diverse portfolio that keeps energy affordable and reliable.

With that in mind, we believe your actions are a step in the right direction for the country, our members and the rural consumers they serve. We thank you for your support of rural America.

Respectfully,

Micheal S. McInnes
Chief Executive Officer

MSM/cm

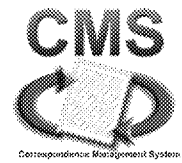
cc: The Honorable Ryan Zinke, Secretary of the Interior
The Honorable Rick Perry, Secretary of Energy
The Honorable Scott Pruitt, Administrator of the Environmental Protection Agency



Correspondence Management System

Control Number: AX-17-000-7297

Printing Date: April 10, 2017 12:14:04



Citizen Information

Citizen/Originator: Calamita, F. Paul

Organization: AquaLaw PLC

Address: 6 South 5th Street, Richmond, VA 23219

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7297

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 24, 2017

of Extensions: 0

Letter Date: Apr 7, 2017

Received Date: Apr 7, 2017

Addressee: AD-Administrator

Addressee Org: N/A

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: AD-Administrator

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Complaint seeking withdrawal of "Dental Amalgam Rule" signed by former Administrator Gina McCarthy in December to regulate disposal of mercury by dentists to municipal sewage treatment plants. Lawyer representing municipal treatment plant operators says rule is unnecessary and burdensome. Rule was withdrawn from Office of Federal Register publication pending review under Trump administration regulatory reform memorandum.

Instructions: AD-Prepare draft response for the Administrator's signature

Instruction Note: N/A

General Notes: Karen Milam is listed in EPA documents as information contact. her number is, (202) 566-1915

CC: Derek Threet - AO-IO

OAR - Office of Air and Radiation -- Immediate Office

OCSPP - OCSPP - Immediate Office

OECA - OECA -- Immediate Office

OGC - Office of General Counsel -- Immediate Office

OLEM - Office of Land and Emergency Management

OP - Office of Policy

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Anne Hargrove	OEX	OW	Apr 10, 2017	Apr 24, 2017	N/A
Instruction: AD-Prepare draft response for the Administrator's signature					

Supporting Information



F. PAUL CALAMITA
PAUL@AQUALAW.COM

PH: 804.716.9021
Fx: 804.716.9022

April 7, 2017

Hon. Scott Pruitt
United States Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: Request for Permanent Withdrawal of Effluent Limitations Guidelines and Standards for the Dental Category ("Dental Amalgam Rule")

Dear Administrator Pruitt:

I am writing on behalf of multiple POTW associations represented by my firm, AquaLaw PLC, regarding EPA's proposed Dental Amalgam Rule (EPA-HQ-OW-2014-0693). My client associations — whose members include public clean water agencies in Missouri, North Carolina, South Carolina, and West Virginia — wrote to the prior EPA administration objecting to the Rule, because it fails to achieve meaningful public benefit despite proposing extensive bureaucratic processes.

As we explain below, the rule provides little or no benefit because existing regulation allows dental offices (99% of which are small businesses) to be addressed as necessary. Moreover, the rule is impermissibly evasive on who will bear the burden of enforcing it — EPA, the States, or local governments. That burden must be clarified. Further, this unnecessary rule will require offsets and it seems a shame to us to have to offset \$49 million annually for this dental amalgam rule that will accomplish so little. In any event, we believe it is incumbent on EPA to give the public an opportunity to comment on the most suitable offsets.

For these reasons, which we elaborate on briefly below, we urge you to table this rule permanently.

We view the rule as a solution in search of a problem. States and localities already regulate dental contributions to sewer systems wherever and whenever necessary. Each treatment plant in the country is evaluated by EPA and the State for compliance with mercury standards every five years. Limits are imposed on the plants where necessary. The public has a right to notice, comment, and appeal of each such determination. The use of dental mercury has plummeted and many older Americans with mercury fillings have replaced them over time. The non-issue of dental amalgam becomes smaller with every passing day. Existing regulation is adequate to allow local governments to regulate dentists should their mercury contributions to the sewer system present an issue.

We are disheartened to hear that despite the facts about the proposed rule, EPA still intends to issue it. At this point, we have two concerns that we ask you to consider:

What is the regulatory burden on local governments? The final rule significantly reduced the regulatory burdens which the draft rule would have imposed on local governments. We appreciate that greatly. However, it leaves unresolved the key question of what enforcement obligation do local sewer utilities have under the rule. We believe the prior Administration intentionally evaded admitting that local governments will be required to verify and enforce dentists' compliance with the rule. EPA must be straight with the public about who (EPA, States, or local governments) will be tasked with enforcing compliance with the rule. Moreover, if the burden will be on local sewer utilities, such burden will have to be offset.

EPA must clarify who bears the burden of enforcing this unnecessary rule. If is EPA, that is fine with us. If it will be imposed on local governments, we object. If the rule is adopted over our objection, we expect this unwise burden will be offset.

What will be the offset? We support a robust Clean Water Act regulatory program. We are concerned about what existing regulatory requirements EPA would remove to offset the unnecessary regulatory burden imposed by this rule – if local governments have to enforce the rule against 120,000 dentists. We are not trying to be difficult but there is so little benefit from this rule that we are struggling to come up with existing rules that are lower hanging regulatory fruit to be eliminated. In any event, we believe the public should have an opportunity to comment on whatever offsetting regulatory burdens will be removed.

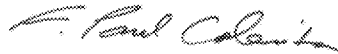
We understand EPA estimates the regulatory burden of the rule to be \$49 million annually to address an issue that is already fully addressed under existing laws. We are surprised that EPA could readily find a \$49 million offset from existing rules to accommodate this new, unnecessary dental amalgam rule which accomplishes so little. That will really say something about the folly of whatever existing requirement is being removed.

Finally, we don't support the requirement that for each new rule, two rules must be removed. A "no net increase in regulatory burdens" approach will be hard enough to accomplish (although we support trying). We don't understand how a "2-for-1" requirement will work and think it is unnecessary and an overreach at this point.

The Rule has since been withdrawn and it is now subject to review by your office, following the January 20, 2017 Memorandum issued by Chief of Staff Priebus on behalf of President Trump. As the Rule was first introduced in 2014, it proposed to directly regulate 120,000 American dentists (99 percent of whom meet the definition of a small business owner) under the Clean Water Act to control approximately 860 pounds of mercury annually. Correspondingly, it would have imposed significant enforcement and permitting burdens on POTWs across the nation to achieve insignificant environmental gains. In fact, EPA estimated the annual cost of compliance to be \$49.4 million while noting only marginal benefits.

Thank you for considering our request that EPA clarify who will have to enforce this unnecessary rule against 120,000 small businesses as well as our concerns about the offsets that will have to be found to accommodate it.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Paul Calamita".

F. Paul Calamita
General Counsel

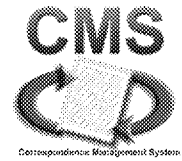
C: Hon. Mick Mulvaney
Ms. Benita Best-Wong
AMCA Members
NCWQA Members
SCWQA Members
WVMWQA



Correspondence Management System

Control Number: AX-17-000-7296

Printing Date: April 10, 2017 11:51:23



Citizen Information

Citizen/Originator: Abel, Gregory

Organization: Berkshire Hathaway Energy
Address: P.O. Box 657, Des Moines, IA 50306-0657

Mundell, Denise

Organization: Berkshire Hathaway Energy Company
Address: P.O. Box 657, Des Moines, IA 50306-0657

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-7296 **Alternate Number:** N/A
Status: For Your Information **Closed Date:** N/A
Due Date: N/A **# of Extensions:** 0
Letter Date: Apr 7, 2017 **Received Date:** Apr 10, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: SNR-Signature Not Required **Signature Date:** N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Requested list of projects and issues of importance to Edison Electric Institute businesses
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
Kristien Knapp - AO-IO
OAR - Office of Air and Radiation -- Immediate Office
OGC - Office of General Counsel -- Immediate Office
OLEM - Office of Land and Emergency Management
OW - Office of Water -- Immediate Office
R7 - Region 7 -- Immediate Office
R8 - Region 8 -- Immediate Office
R9 - Region 9 - Immediate Office
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A



Greg Abel
Chairman, President and CEO

April 7, 2017

The Honorable Scott Pruitt
Administrator-U.S. Environmental Protection Agency
Washington, D.C.

Dear Administrator Pruitt:

Please accept my thanks for your recent attendance and remarks at the March 14, 2017 Edison Electric Institute CEO meeting. As I'm sure you felt, your remarks were very well received. I particularly appreciated our exchange and the invitation to provide a list of items of importance to our businesses, which is attached.

Berkshire Hathaway Energy's operating companies - MidAmerican Energy Company, NV Energy Inc., PacifiCorp, BHE Renewables LLC, Northern Natural Gas and Kern River Gas Transmission Company - are primarily involved in the generation, transmission, and distribution of energy, serving 4.7 million end users in the U.S. located 18 states. Eight percent of all of the natural gas used domestically flows through our pipelines. In addition, we own 7.5% of all wind generation and 4.5% of all solar generation in the U.S.

The large geographic scope of our businesses means that we are subject not only to numerous federal regulations and rulemakings, but also to the determinations of multiple regional administrators and offices. We are supportive of scientifically-based environmental regulations that are appropriately and consistently applied and consider costs and benefits. This is particularly important for our regulated utilities, since these environmental requirements have a direct impact on the energy costs and competitiveness of our customers and communities. Accordingly, we have a strong stake in advocating for balanced solutions. We also have worked closely with the states in which we serve or have assets, and support a strong respect for their processes and outcomes.

We appreciate that the change in administration will result in adjustments to both personnel and policy. We make long-term investments, requiring clear policy signals and a stable and consistent policy environment that will continue to allow us to best serve our customers while delivering sustainable energy solutions through the implementation of our core principles of customer service, employee commitment, environmental respect, regulatory integrity, financial strength and operational excellence.

BERKSHIRE HATHAWAY ENERGY

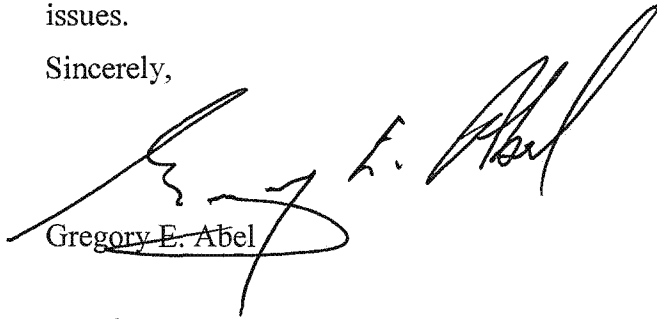
P.O. BOX 657 • DES MOINES, IA 50306-0657, U.S.A. • 515-242-4000 • FAX: 515-242-4031

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The attached list of projects and issues demonstrates both the substantial interaction of our companies with the Environmental Protection Agency, as well as the need to move forward to provide clarity on a host of matters that are currently in flux. I appreciate the efforts of you and your team in reviewing these as part of your overall assessment of the Administration's policies going forward. We believe strongly that you have a unique opportunity to work constructively with the electric sector to advance measures that will benefit the country's environmental resources.

Please let me know if I or my team can provide any follow-up information as you review these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory E. Abel', is written over a printed name. The signature is stylized with a large, sweeping initial 'G' and a long, horizontal stroke extending to the right.

Attachment

Berkshire Hathaway Energy

Pending Issues involving Environmental Protection Agency Rules and Actions

Berkshire Hathaway Energy's U.S. operating companies support scientifically-based environmental regulations that are appropriately and consistently applied and consider costs and benefits. Our regulated electricity generating companies serve approximately 4.7 million end users in 18 states utilizing geothermal, hydroelectric, wind, solar, natural gas, coal and nuclear resources. These operating companies include MidAmerican Energy Company, an Iowa-based utility providing regulated electric and natural gas service in Iowa, Illinois, Nebraska and South Dakota; PacifiCorp, which provides regulated electric service in California, Idaho, Oregon, Utah, Washington and Wyoming; and NV Energy Inc., which provides regulated electric and natural gas service in Nevada. In addition, BHE Renewables, LLC, operates as an independent power producer and is the owner of natural gas, wind, geothermal, solar and hydro projects in New York, Arizona, Texas, California, Illinois, Kansas, Nebraska, and Hawaii. We also own and operate interstate gas pipelines – Kern River and Northern Natural Gas – that serve customers in Iowa, Illinois, Michigan, Minnesota, Nebraska, South Dakota and Wisconsin.

Regulatory certainty is key to advance our objectives in maintaining safe, reliable and affordable electric service for our customers. We have identified the issues below as important for Berkshire Hathaway Energy and EPA to work together to achieve a greater degree of certainty that achieves these objectives, as well as to appropriately safeguard the country's environment. One important theme is the need to recognize and respect the key role of states relative to delegated authorities and other state prerogatives. We work closely with the states we operate within and believe that the EPA should provide substantial respect for their processes and outcomes.

Regional Haze

- Utah Regional Haze Federal Implementation Plan (FIP) (PacifiCorp) – After many years of discussion and EPA's rejection of the Utah regional haze state implementation plan (SIP), Utah submitted an amended SIP which proposed a Best Available Retrofit Technology (BART) alternative, after consideration of the appropriate factors, including cost. Ultimately, EPA, weighing only one element of visibility improvement, rejected the SIP and issued a FIP which would impose an additional \$700 million in control costs for virtually no visibility improvement. The FIP has been appealed in the 10th Circuit Court of Appeals (Utah, et al. v. EPA) where a judicial stay has been requested and merits briefing is underway. In addition, multiple petitions for reconsideration and request for administrative stay were submitted to EPA in September 2016; however, EPA has taken no action on the petitions. We encourage EPA to grant the petitions for reconsideration and take action to hold the ongoing judicial appeal in abeyance pending EPA's action on the reconsideration petitions, as well as to issue an administrative stay and consent to the court issuing a judicial stay pending, at a minimum, further resolution of the administrative petitions.
- Wyoming Regional Haze FIP (PacifiCorp) – Portions of the Wyoming regional haze FIP are being appealed before the 10th Circuit Court of Appeals (Wyoming, et al. v. EPA), which granted a judicial stay of the FIP's requirements. The case has been fully briefed

but oral argument has not yet been scheduled. Requests for reconsideration and administrative stay were filed in March 2014, and EPA has yet to take any action on those requests. We encourage EPA to take action on the request(s) for reconsideration and continue to support the judicial stay.

- Regional Haze Rule Amendments (MidAmerican Energy Company, NV Energy Inc. and PacifiCorp) – On January 10, 2017, the final amendments to the regional haze rule were published in the Federal Register, which, among other things, allows states to delay their regional haze SIPs for the next planning period from July 31, 2018 to July 31, 2021. The final regional haze rule amendments were appealed in the D.C. Circuit Court of Appeals. Under the final rule, the planning period remained the same – 2018 to 2028, to advance reasonable further progress in improving visibility. In cases where EPA has rejected a SIP and issued a FIP and litigation is ongoing, EPA should accept the state’s definition of BART and resolve the need for any additional controls as part of the long-term strategy in the second planning period from 2018 to 2028. Doing so would resolve outstanding litigation, free up EPA and DOJ resources, and lift the burden from states to submit new SIPs without knowing whether their appeals are successful. EPA has previously determined that many western Class I areas experience only slight improvement in visibility despite the installation of costly controls at stationary sources. During the second planning period, EPA should, as required, assess non-stationary sources and other drivers that have a greater impact on visibility in Class I areas.

Management of Coal Combustion Residuals (MidAmerican Energy Company, NV Energy Inc. and PacifiCorp) – The regulation of coal combustion residuals (CCR) has the potential of imposing significant costs on both operating as well as retired or retiring coal-fueled units based on EPA’s implementation of the program, resolution of outstanding litigation, and an upcoming rulemaking. EPA’s review of the following specific items will be key in obtaining the desired degree of certainty to implement the rule cost effectively.

- Implementation of the WIIN Act’s CCR Provisions – On December 26, 2016, President Obama signed into law the Water Infrastructure Improvement for the Nation Act (“WIIN Act”). A section of the WIIN Act established procedures for EPA to authorize the states to implement the CCR rule through state permit programs. If the states do not seek permit program approval, EPA is directed to implement the CCR rule through a federal permit program, provided Congress provides specific funding for EPA to do so. Absent state or federal CCR rules, facilities face primary implementation through citizens’ suits. It is important to Berkshire Hathaway Energy’s operating companies that EPA express strong support for Congressional funding of the WIIN Act. Adequate funding would allow EPA to implement the CCR rule for states that do not choose to adopt their own permit program. We also request that EPA expeditiously approve state CCR permit programs, including those with risk-based management controls.

Risk-Based Management Options – When the CCR rule was adopted, EPA did not have authority to implement the rule via a federal or state permitting program. Congressional passage of the WIIN Act changed this. As a result, the basis for EPA’s previous concern regarding utilization of risk-based flexibility under a self-implementing rule no longer exists.

Therefore, EPA should amend the rule to incorporate risk-based management options contained in state and other EPA solid waste programs to eliminate the one-size-fits-all requirements and allow for assessment of risk in decision making for all facets of the rule, including groundwater monitoring. We understand EPA is positioned to issue guidance on state permitting programs in April 2017 and finalize the guidance in June 2017 and look forward to reviewing and providing comment on such guidance.

Steam Electric Effluent Limitation Guidelines (MidAmerican Energy Company, NV Energy Inc. and PacifiCorp) – Distinct from the CCR requirements, the Steam Electric Effluent Limitation Guidelines (ELGs) create additional impacts on coal, gas, nuclear and oil-fueled power plant operators related to the ability to discharge process-related wastes. A case in the 5th Circuit Court of Appeals (Southwestern Electric Power Co., et al. v. EPA), along with petitions for reconsideration, are pending. We encourage EPA to grant reconsideration, conduct a review of the guidelines, and implement action as appropriate.

Air Quality Standards and Regulations

- Western Interstate Ozone Transport (PacifiCorp) – EPA has relied on its modeling utilized in the eastern U.S. under the Cross State Air Pollution Rule to dispute modeling methodologies and results submitted by western states, including Utah and Wyoming, with respect to interstate transport of emissions, and particularly modeled impacts on the Denver, Colorado, metropolitan area. The states and other parties have raised concerns about EPA’s modeling and analysis of interstate transport of emissions. In fact, Wyoming specifically requested more time to analyze the complex interstate transport issues that it felt EPA had failed to adequately address; however, the request was denied by EPA due to the alleged impact on a consent decree. In order to ensure reasonable and appropriate regulation based on scientifically supportable conclusions, EPA should allow states a reasonable period of time to conduct modeling that is more representative of western terrain.
- One Hour SO₂ Standard in the Western U.S. (PacifiCorp) – The one-hour SO₂ standard requires that the states demonstrate compliance with the standard through modeling and/or monitoring. Complex terrain in the western U.S. makes the use of EPA’s standards relating to predictive models and modeling protocol difficult, producing results that may not be scientifically supportable. EPA should examine its modeling protocols and required models and ensure that approved models take into consideration steep and complex terrain and restricted access when requiring modeling to be conducted.
- Title V Permit Reviews (BHE Renewables LLC, MidAmerican Energy Company, NV Energy Inc. and PacifiCorp) – We encourage EPA to take prompt action on Title V operating permit reviews. For example, PacifiCorp’s Hunter plant Title V permit renewal was issued by the state of Utah under its delegated authority. As part of the approval process, the Utah Department of Environmental Quality submitted the permit to EPA for review; EPA failed to conduct a timely review, resulting in the Sierra Club filing of a petition with EPA to object to the permit. EPA did not respond to the petition and, ultimately, the Sierra Club filed a lawsuit against EPA for failing to take timely action on the permit. EPA agreed in a court-approved stipulation to respond to the Petition for

Objection to the Hunter Title V permit no later than August 31, 2017. EPA should take action to approve the Title V permit and deny Sierra Club's petition for objection in advance of the August 31, 2017, deadline.

Water Quality Regulations (BHE Renewables LLC, MidAmerican Energy Company, NV Energy Inc. and PacifiCorp)

- Waters of the U.S Rule – Even as EPA works to rewrite the waters of the U.S. rule consistent with the February 28, 2017, Executive Order and the March 1, 2017, Federal Register notice, it is of critical importance for EPA to maintain the cooperative process with the states for state water quality certifications under Clean Water Act Section 401 so that the nationwide permit program and related permit programs proceed without interruption. The Berkshire Hathaway Energy operating companies routinely rely on nationwide permits for construction and maintenance activities for numerous project-related actions, such as renewable energy development, and other activities critical to maintaining safe, reliable electricity supplies to our customers.
- Clean Water Act Section 401 – States have certification authority under Clean Water Act section 401 to impose a broad range of conditions on Federal Energy Regulatory Commission (FERC) hydroelectric project licenses. While intended to protect water quality, states often impose conditions unrelated to water quality. EPA has little or no legal ability to limit the scope of state water quality certifications and FERC also has little authority to reject state certification conditions even when a federal agency believes that the state has exceeded its authority. We encourage EPA to explore the potential of adopting regulations more narrowly defining the scope of statutory terms such as “water quality standards” and “appropriate requirement of state law”.
- State Designations Under the Clean Water Act – By disapproving (or threatening to disapprove) state water quality standards and state Clean Water Act designations, EPA has leveraged the Clean Water Act to force states to adopt more aggressive water quality standards. For example, in the Pacific Northwest, this has resulted in states adopting water quality standards for temperature that are more stringent than natural stream conditions. These decisions make it difficult for states to issue discharge permits and 401 certifications with reasonable conditions. EPA should defer to states to implement reasonable water quality standards under section 303(d).

Superfund (MidAmerican Energy Company, NV Energy Inc. and PacifiCorp)

- Portland Harbor Superfund Site – We encourage EPA to address superfund sites in a manner that logically addresses the site and party dynamics and encourages cooperation among the potentially responsible parties. The Portland Harbor Superfund Site covers a large area and involves hundreds of potentially responsible parties. For remediation to effectively advance at sites such as this, it is critical that EPA entertain the idea of breaking up the site into smaller more workable pieces for remedial design and remedial action. The current mega-site approach taken by EPA is unwieldy and breeds expensive litigation; EPA should focus on smaller more targeted and manageable approaches. Further, EPA has failed to acknowledge the likelihood, given the site features, that recontamination will occur and established an extremely low cleanup standard.

Reasonable long-term performance standards should be established to reflect the likelihood of recontamination.

EPA's Consultative Role (BHE Renewables LLC, MidAmerican Energy Company, NV Energy Inc. and PacifiCorp)

- EPA Endangered Species Act Consultation on State Water Quality Standards – EPA (as well as the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS)) takes the position that it must consult with NMFS and the USFWS when it proposes to approve state water quality standards that are intended to protect designated uses that include Endangered Species Act (ESA)-listed species. Because of the large number of ESA-listed fish in the Pacific Northwest, this means that all state water quality standards intended to protect aquatic life must not only be approved by EPA, but they must also effectively be approved by NMFS and the USFWS and because the missions of NMFS and USFWS are narrowly focused on the protection of listed species, this results in extraordinarily stringent standards and substantial delays. In recent federal litigation in the state of Washington, EPA's position on consultation appears to have played an important role in the federal district court's decision to require EPA to consult. This issue is ultimately a question of statutory interpretation but EPA's position (as well as NMFS' and USFWS') will continue to carry substantial weight in future litigation on this issue. EPA should consider taking a position that it is not required to consult with NMFS and USFWS, under the ESA, when it proposes to approve state water quality standards.

EPA Regional Offices (BHE Renewables LLC, MidAmerican Energy Company, NV Energy Inc., PacifiCorp)

- Regional Office Staffing – As EPA considers potentially significant budget reductions, it is important to ensure that activities performed by regional offices are not stalled as a result of regional office consolidation or delegation of actions from EPA headquarters. There are a number of compliance programs that are maintained by the regional offices because the states have chosen not to accept delegation from EPA to administer those programs. For example, in Iowa, EPA Region 7 maintains the hazardous waste program as well as program oversight of manufactured gas plant activities and implementation of the Mercury and Air Toxics program.

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/11/2017 11:25:39 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Smith, Kristi [Smith.Kristi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]
CC: Versace, Paul [Versace.Paul@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]
Subject: RE: Meeting to Discuss Fairbanks CD
Attachments: 17-000-6499 (002).pdf; Daily Reading File.3.27.17.pdf

Flag: Flag for follow up

The letter from Senators Murkowski and Sullivan and Rep. Young that we discussed today is attached to this e-mail. The discussion of PM is on PDF page 3.

We also received a letter from an Alaska state legislator on the issue—that is attached as well.

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Appointment-----

From: Minoli, Kevin
Sent: Monday, April 10, 2017 4:36 PM
To: Minoli, Kevin; Schwab, Justin; Fotouhi, David; Schmidt, Lorie; Smith, Kristi; Wilcox, Geoffrey; Srinivasan, Gautam; Prabhu, Aditi
Cc: Versace, Paul; Skinner-Thompson, Jonathan
Subject: Meeting to Discuss Fairbanks CD
When: Tuesday, April 11, 2017 3:30 PM-3:55 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Room 4000

Congress of the United States
Washington, DC 20515

March 16, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

As you seek to refocus the Environmental Protection Agency (EPA) on its statutory mandates as well as core missions and programs, we write to bring your attention to a range of issues that are negatively affecting growth and prosperity in Alaska, with little to no commensurate benefit to the environment. We appreciate your engagement on these issues during your confirmation process, and look forward to working with you to address them and other regulatory burdens that are causing harm in our home state.

We greatly appreciate the work you have already done to initiate an overhaul of the agency's "Waters of the United States" regulation, to extend the comment period for a proposed rule that would impose duplicative financial assurances on hardrock mines, and to streamline the permitting process for important energy infrastructure, including the creation of Regulatory Reform Officers.

Clean Drinking Water

The crisis in Flint, Michigan exposed nationwide problems with lead contamination in drinking water. Dozens of water systems in Alaska exceed EPA's lead limits. These elevated lead levels are extremely problematic in our rural communities. For example, the only school in Newtok, a Yup'ik community with about 380 residents, exceeded federal lead limits last year. Safe drinking water for every American, particularly Alaska's rural residents, must be a priority for EPA under your direction. As such, funding key programs that provide grants and loans to municipalities and poorly served rural communities is vital to achieving this priority.

Rural Sanitation

Basic sanitation infrastructure that is taken for granted in much of the United States still presents on-going serious challenges in Alaska. According to the Alaska Department of Environmental Conservation (ADEC), over 30 Alaska communities still lack running water or flushing toilets.

As a result, many Alaskans must use “honey buckets”¹ and “washeterias.”² Last year’s Water Resources Development Act authorized a grant program to help communities without infrastructure obtain first-time access to indoor plumbing and to provide needed assistance for aging and outdated infrastructure in rural Alaskan communities. Without these basic necessities, Alaskans face real and devastating health consequences. ADEC reports that the lack of in-home water and sewer service in rural Alaska causes severe skin infections and respiratory illnesses and that residents of Southwest Alaska suffer rates of invasive pneumococcal disease that are among the highest in the world. During your confirmation hearing you committed to working with Congress to ensure that programs under the EPA’s authority, like the ones passed in last year’s Water Resources Development Act, are funded. We look forward to working with you to bring basic sanitation infrastructure to Alaskans who do not currently have these essential services.

Waters of the United States Rule

The economic harm to Alaska if the last administration’s “Waters of the United States” or “WOTUS” rule is left in place cannot be overstated. This rule broadly defined which waters are subject to regulation under the Clean Water Act. This is deeply problematic for Alaska, which contains over 60 percent of the nation’s jurisdictional waters and approximately 65 percent of the nation’s wetlands. If the WOTUS rule is implemented in its current form, these totals will certainly increase and subject a wide range of economically beneficial activities to onerous regulatory requirements. On February 28, 2017, the President issued an executive order directing EPA and the Army Corps of Engineers to review the rule in line with the policy of “ensur[ing] that the Nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.”³ We request that EPA continue to review the WOTUS rule and draft a new rule that is faithful to the text of the Clean Water Act and intent of Congress, while appropriately balancing environmental protection with economic growth.

Small Remote Incinerators

EPA’s Federal Plan for Commercial and Industrial Solid Waste Incineration (CISWI) units adversely impacts Alaskan entities that use small remote incinerators (SRIs) to dispose of waste in remote areas where traditional disposal methods are unavailable. EPA’s Plan impacts all remote development in Alaska, including energy and mining, and could also impact tourism and other industries in the future. The very same SRIs that EPA is proposing to ban in rural parts of our state currently operate in National Parks in Alaska and are exempted from the Plan because they are government owned. SRIs with such *de minimus* impact that they are allowed in a National Park should also be permissible in remote parts of our state. The alternative to SRIs is that remote sites will be forced to store their waste, which risks attracting wildlife, and then helicopter or barge the waste out – a far worse impact on the environment than very small

¹ ADEC’s Division of Water notes that many households in rural Alaska use a rudimentary toilet known as a “honey bucket” in which a bucket lined with a plastic bag is used to collect urine and feces. These plastic bags of human waste are then disposed of in sewage lagoons.

² Washeterias are central water points where village residents can access running water for tasks such as bathing and washing clothes.

³ Presidential Executive Order On Restoring The Rule Of Law, Federalism, And Economic Growth By Reviewing The “Waters Of The United States” RULE, 2017 WL 764940, at *1

amounts of incineration. We request that EPA recognize the unique geography and challenges of Alaska and work with us to exempt the state from the SRI requirements in CISWL.

Fish Grinding

Currently, pursuant to EPA's regulations, all onshore Alaska facilities (except those in Kodiak and Dutch Harbor, where there are documented water quality impacts) are permitted to discharge seafood waste after grinding to one-half inch "in all dimensions." However, no available technology guarantees grinding to one-half inch "in all dimensions" 100 percent of the time. The grinders that the seafood plants use are "designed" to grind to one-half inch, but because of the nature of the waste material, it is impossible to always comply with this requirement. It is also our understanding that EPA is considering changing its regulations to require that facilities in certain locations (Ketchikan, Petersburg, Cordova, Anchorage, Sitka and the Kenai Peninsula) screen their waste instead of grinding. This would impose significant additional costs on those facilities, without any documented water quality benefits, and could result in the closing of smaller processors. Although permits for onshore facilities are issued by the State of Alaska, those permits are required to incorporate EPA's regulations. Processing vessels operating in waters offshore of Alaska are subject to the same one-half inch grinding requirement, but there are no documented water quality issues that require such grinding. The delegation looks forward to working with you to find a reasonable, common sense resolution to onshore and offshore fish grinding issues as soon as possible.

PM 2.5

Because of the extreme cold and its location, being surrounded by higher terrain, Fairbanks, Alaska has struggled to meet EPA's air quality standards for particulate matter. Until a reliable supply of natural gas is available to the community, residents will be forced to heat with oil or wood stoves that release small smoke particles. EPA is now proposing penalties on the community under the Clean Air Act for noncompliance. We respectfully request that EPA work with us to improve air quality in Fairbanks through mechanisms like the Targeted Airshed Grants program and that the Agency delay those penalties because of the extraordinary circumstances confronting Fairbanks.

Preemptive/Retroactive Permit Vetoes

Alaska is blessed with an almost unparalleled abundance of natural resources. Our state has successfully balanced resource development with environmental stewardship for decades, but regulatory stability is critical to drawing private investment. As such, the delegation respectfully requests that the EPA reverse its recent pattern of preemptive and retroactive vetoes and instead commit to following the permitting processes as specified in law. Both preemptive and retroactive vetoes undermine the reliability and fairness of the permitting process, which exists to ensure due process. The permitting process is designed to fully vet issues by providing applicants with the opportunity to make their case and allowing relevant agencies to review potential issues. Discontinuing the use of preemptive and retroactive vetoes would not impinge on EPA's authority to veto projects *within* the permitting process, when merited, after review of environmental impacts and scientific records. However, it would avoid prejudgments and provide needed regulatory certainty for applicants as they look to invest in our state.

Clean Power Plan

The previous administration agreed to exempt Alaska from the final "Clean Power Plan" due to the lack of applicable data and the recognition of the unique circumstances faced by our state. As

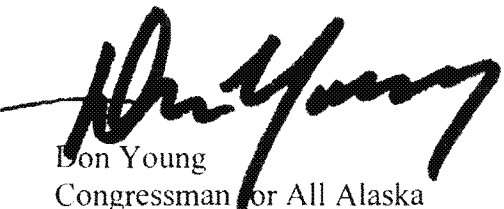
you consider the future of this sweeping regulatory regime, it is paramount that Alaska remain exempt. One-size-fits-all standards do not work in Alaska, because only a small portion of our state, the Railbelt region, has an electric grid. Much of Alaska relies on village-scale microgrids powered by diesel generators, and no standard developed for the interconnected grid of the contiguous states could ever properly be applied to Alaska.

CERCLA 108(b)

EPA's proposed rule "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry," is redundant and unnecessary. There are already well-established, modern financial assurance requirements in place at both the state and federal levels. The U.S. Small Business Administration Office of Advocacy has strongly recommended that EPA withdraw its proposed rule. The Bureau of Land Management and the U.S. Forest Service have also expressed concerns with its infringement into their respective jurisdictions and its duplicative nature. The delegation requests that you closely review the proposed rule and consider requesting an extension of the court-ordered deadline if necessary. As noted previously, we appreciate that you have already extended the comment period for this complex and highly technical proposal, and are eager to work with you to ensure that federal regulations do not further weaken our nation's mineral security.

Thank you for your consideration of the many challenges facing our state. We urge you to reject the top-down, paternalistic approach that marked EPA's approach in Alaska in the last administration and ask you to avoid the layering of overlapping and duplicative rules that serve primarily to undermine Alaskans' ability to provide for their families. We welcome your leadership and look forward to working with you and with the new administration to address these and related issues.

Sincerely,

		
Lisa Murkowski United States Senator	Dan Sullivan United States Senator	Don Young Congressman for All Alaska



Correspondence Management System

Control Number: AX-17-000-6746

Printing Date: March 27, 2017 03:59:00



Citizen Information

Citizen/Originator: Wilson, Tammie

Organization: Alaska State House of Representatives

Address: North Plaza Mall, 301 Santa Claus Lane, North Pole, AK 99705

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6746

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 11, 2017

of Extensions: 0

Letter Date: Mar 13, 2017

Received Date: Mar 27, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: RA-R10-Regional Administrator

Signature Date: N/A

- Region 10

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Concerned with reclassification of Fairbanks North Star Borough as a nonattainment area

Instructions: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10

Instruction Note: N/A

General Notes: N/A

CC: Kristien Knapp - AO-IO

OAR - Office of Air and Radiation -- Immediate Office

OCIR - Office of Congressional and Intergovernmental Relations

OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R10	Mar 27, 2017	Apr 11, 2017	N/A
Instruction: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Alaska State Legislature
House of Representatives
Representative Tammie Wilson

Interim
North Pole Plaza Mall
301 Santa Claus Lane
North Pole, Alaska 99705
Phone: 907.451.2723



Session
State Capitol
Juneau, AK 99801
Phone: 907.465.4797
Cell: 907.590.7602

Rep.Tammie.Wilson@akleg.gov

March 13, 2017

Dear Mr. Pruitt,

My name is Tammie Wilson and I am the State Representative for North Pole, Alaska. The EPA, based on the Clean Air Act, designated the Fairbanks North Star Borough as a PM 2.5 nonattainment area after the agency decreased the requirement from 65 micrograms per cubic meter (24-hour average) to 35 micrograms per cubic meter. The borough was just under the 65 micrograms per cubic meter so our air has not substantially changed but the standard did.

Wood-fired space heating devices, predominantly wood/pellet stoves and hydronic heaters, are used by a growing number of Borough residents to heat homes and businesses. The amount of wood burning has nearly doubled since 2006; which is a direct response to increases in the price of heating oil and the lack of low-cost, clean-burning alternative fuels.

The Alaska Department of Conservation peer Review states that weather is a primary problem in reaching attainment within Interior Alaska. The residents cannot change the geographic features of our area. This is an energy issue! Until we solve accessibility to affordable energy, those living in our cold environment with severe inversions will continue to utilize solid fuel burning devices.

So what has been accomplished thus far:

1. The borough has developed and implemented an education program. I am happy to report that I have personally witnessed more wood being cut earlier and covered throughout the nonattainment area. Many homeowners now have over a year's worth of split wood ready to be used.
2. The change-out program has now upgraded or removed solid fuel devices at a cost of over \$10 million utilizing both state, federal and local funding. It is estimated that at least 550 solid fuel burning devices will be upgraded a year. In 2013, the borough targeted the hot zones providing more incentive for those areas. A voucher like system for those unable to forward fund the upgrade has also been put into place.
3. The City of Fairbanks has a moratorium on additional outdoor hydronic appliances being placed within the city limits.

4. The state now responds to all complaints. They have taken action on owners of solid fuel burning devices that were in violation of state statute. The state has budgeted \$44,000,000 for residents to take part in the Weatherization program for low income households, as well as, the Home Energy Rebate program. Heating devices within either of these programs can be upgraded.
5. Most important is the Interior Energy Project which is working toward bringing low cost energy in the form of gas to the Interior. The state has allocated over \$362 million for financing of this project.
6. The Alaska Legislature has given approval for the State to move forward with a gas pipeline.

The EPA is now threatening to reclassify the Borough as "serious" which would cause even stricter rules and regulations on my constituents. This will be devastating to the North Pole area. The FNSB has divided North Pole and Fairbanks into separate areas. This new designation will cause more NO BURN BANS during the winter in my district.

What more does the EPA require? Again, weather is the most significant nonattainment factor; so how do we accurately measure the progress our community is making? If we continue the current programs while moving forward with a gas project, will this not be enough? Please help my community as we have come a long way but cannot afford to keep being penalized for an issue that is mostly out of our control.

I appreciate your time and look forward to any assistance you can give me.

Sincerely,



Rep. Tammie Wilson

cc: President Donald Trump
Senator Lisa Murkowski
Senator Dan Sullivan
Rep. Don Young

Message

From: Munoz, Charles [munoz.charles@epa.gov]
Sent: 4/14/2017 5:02:27 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Ford, Hayley [ford.hayley@epa.gov]
Subject: RE: Cabinet Affairs Update

This is great, thank you.

Charles Munoz
White House Liaison
Environmental Protection Agency
202-380-7967

From: Fotouhi, David
Sent: Friday, April 14, 2017 12:53 PM
To: Munoz, Charles <munoz.charles@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs Update

Hi, Charles.

Thanks for reaching out. Below are a few bullet points for your potential use on the call—happy to provide any additional information that would be helpful. I did not know how far back in time to reach on these, so of course feel free to skip any of the points if you consider it to be old news.

If you have any questions about any of these points, please let us know. Thanks!

Best,

David

Recent/upcoming issues for call with cabinet affairs

Deliberative Process / Attorney-Client / Attorney Work Product Ex. 5

Deliberative Process / Attorney-Client / Attorney Work Product Ex. 5

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Munoz, Charles
Sent: Friday, April 14, 2017 11:01 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: Cabinet Affairs Update

I'm putting together an update for a call with cabinet affairs and wanted to know if there's anything you want me to bring up. Either to brag about or to put on their radar as something that might be popping up in the coming days.

Format is as basic as you want it to be. I'm essentially looking for bullet points I can read off of during the call with a little background on each point in case I need to elaborate. I need this by 1 pm.

This will also be an ongoing call so myself or Hayley Ford will be reaching out on a consistent basis for updates.

Charles Munoz
White House Liaison
Environmental Protection Agency
202-380-7967

Message

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [cindy.s.barger.civ@mail.mil]
Sent: 4/27/2017 6:22:19 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
CC: Shapiro, Mike [Shapiro.Mike@epa.gov]; Peck, Gregory [Peck.Gregory@epa.gov]; Loop, Travis [Loop.Travis@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Frithsen, Jeff [Frithsen.Jeff@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Hewitt, Julie [Hewitt.Julie@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Stokely, Peter [Stokely.Peter@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Donald.e.jackson@usace.army.mil; Brown, Byron [brown.byron@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; FertikEdgerton, Rachel [FertikEdgerton.Rachel@epa.gov]; Borum, Denis [Borum.Denis@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Washington, Valerie [Washington.Valerie@epa.gov]; Howard, MarkW [Howard.MarkW@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Lousberg, Macara [Lousberg.Macara@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]; McGartland, Al [McGartland.Al@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Clark, Becki [Clark.Beki@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Hanson, Andrew [Hanson.Andrew@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Swackhammer, J-Troy [Swackhammer.J-Troy@epa.gov]; Connors, Sandra [Connors.Sandra@epa.gov]; Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]

Subject:

Attorney Client / Ex. 5

I got this so hopefully the critical players did as well.

Sent from my iPhone

On Apr 27, 2017, at 2:00 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

I had sent the urgent message below this morning but hearing that no one received it, so am resending.

Could ONE person please reply to all to confirm receipt?

Thanks.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Neugeboren, Steven
Sent: Thursday, April 27, 2017 11:27 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose

<Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew
<Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik
<Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann
<Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne
<bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William
<Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha
<dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack
<Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry
<Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie
<Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter
<Stokely.Peter@epa.gov>; Kevin Minoli <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil;
Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron
<brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>;
Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark
<Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW
<Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew
<Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph
<Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy
<Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al
<McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki
<Clark.Beki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew
<Hanson.Andrew@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Swackhammer, J-Troy
<Swackhammer.J-Troy@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Lorie Schmidt
<Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan
<Skinner-Thompson.Jonathan@epa.gov>

Subject: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Importance: High

I am sending this to all the EPA folks that are invitees to the Wednesday morning WOTUS meetings.

As a followup to our conversation at yesterday's WOTUS meeting, I and my staff have drafted language and discussed it with our front office (Kevin and David) about an option with regard to cost/benefit analysis for step 1 we touched on yesterday. Given the time urgency, our front office believes that there needs to be a meeting including the team and principles **TODAY** to make a decision.

Here is the suggested language, and below is the rationale for it:

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-548

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 4/6/2017 10:28:28 PM
To: Weekly Report Group [Weekly_Report_Group@epa.gov]
CC: Knapp, Kristien [Knapp.Kristien@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Shapiro, Mike [Shapiro.Mike@epa.gov]; Cleland-Hamnett, Wendy [Cleland-Hamnett.Wendy@epa.gov]; Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: OGC's weekly report
Attachments: OGC Weekly Report 4.6.17.docx

All- Elise, Justin, David, and I are happy to answer questions or provide additional information on any matter listed in the report. Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Office Line: 202-564-8040
Direct Dial: 202-564-5551

Message

From: Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Sent: 3/9/2017 9:27:28 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Washington, Valerie [Washington.Valerie@epa.gov]
Subject: Charts of upcoming litigation deadlines
Attachments: Weekly Report 3-9-17.docx; One Docket Report 3-9-17.pdf

Flag: Flag for follow up

Hi Justin – Attached are the 2-Week Look Ahead and the One Docket chart of deadlines through the end of April.

Aditi Prabhu
Special Assistant, Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 4/25/2017 2:03:55 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Subject: My comments on WOTUS
Attachments: image2017-04-25-084243.pdf; ATT00001.htm

Here they are. Let me know if you can't read them or have questions. Thanks!

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Veney, Carla" <Veney.Carla@epa.gov>
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: pdf

From: DC-WJCN-4020-M@epa.gov [mailto:DC-WJCN-4020-M@epa.gov]
Sent: Tuesday, April 25, 2017 8:43 AM
To: Veney, Carla <Veney.Carla@epa.gov>
Subject:

Message

From: Hupp, Sydney [hupp.sydney@epa.gov]
Sent: 4/21/2017 8:20:32 PM
To: Bangerter, Layne [bangerter.layne@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Ford, Hayley [ford.hayley@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Konkus, John [konkus.john@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Martin, JohnC [Martin.JohnC@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Perrotta, Pasquale [Perrotta.Pasquale@epa.gov]; Ringel, Aaron [ringel.aaron@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Willis, Sharnett [Willis.Sharnett@epa.gov]; Woodward, Cheryl [Woodward.Cheryl@epa.gov]
Subject: April 24-28, 2017 | Line x Line
Attachments: April 24-28th LXL .docx

Please continue sending in meetings that you should be added to. Have a great weekend everyone!

Sydney Hupp
Office of the Administrator- Scheduling
202.816.1659

From: So, Katherine [so.katherine@epa.gov]
Sent: 2/17/2017 2:57:53 PM
To: McGonagle, Kevin [mcgonagle.kevin@epa.gov]; McCabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: Pruitt Pre-vote Clips 2/17/17

Below: Reuters, AP, Bloomberg BNA, E&E News (2), Politico Pro, LA Times, Washington Times, Huffington Post, The Hill (2/16)

Reuters

[http://www.reuters.com/article/us-usa-congress-epa-idUSKBN15W131'](http://www.reuters.com/article/us-usa-congress-epa-idUSKBN15W131)

Senate set to approve Trump's EPA pick as White House targets regulation

By Timothy Gardner 2/17/17

The U.S. Senate is expected to approve President Donald Trump's pick to run the Environmental Protection Agency on Friday over the objections of Democrats and green groups worried he will gut the agency, as the administration readies executive orders to ease regulation on drillers and miners.

Trump's nominee, Oklahoma Attorney General Scott Pruitt, is likely to pass the vote scheduled for midday with the support of nearly all the Republicans in the Republican-controlled Senate. The vote could take place earlier in the day.

Pruitt's nomination has been controversial in progressive circles: he sued the agency he intends to lead more than a dozen times while top prosecutor of his oil and gas producing state, and has expressed doubts about the science behind climate change. But many Republican lawmakers view him as a welcome change at the top of the EPA, an agency they say declared war on the coal industry during Barack Obama's presidency with its rules against carbon emissions.

Democratic Senator Ben Cardin said on Thursday he was concerned Pruitt's opposition to Obama's landmark Clean Power Plan to reduce emissions from coal and natural gas burning plants would hurt the domestic environment and international efforts to curb climate change.

"He has not been at all committed to the United States' programs on dealing with climate change let alone our international responsibilities to lead other countries to do what they need to do," Cardin said on the Senate floor.

Pruitt only needs 51 votes in the 100-member chamber to be approved. Nearly all 52 Republicans, except Senator Susan Collins, who announced her opposition on Wednesday, are expected to vote for him.

In addition, one Democrat, Heidi Heitkamp, said on Thursday she would vote for Pruitt despite her concerns about his support for renewable energy like wind and solar power, and for cutting emissions blamed for global warming. If there were a tie, Vice President Mike Pence would vote to break it.

If Pruitt is approved, Trump is expected to quickly issue two to five executive orders to reshape the EPA, sources said.

Trump has promised to slash environmental rules as a way to bolster the drilling and coal mining industries, but has vowed to do so without compromising air and water quality. The White House web site says lifting policies such as Obama's Climate Action Plan would help U.S. workers and raise wages.

AP

http://hosted.ap.org/dynamic/stories/U/US_SENATE_TRUMP_CABINET?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

T

Senate on track to confirm Scott Pruitt as EPA administrator

By Michael Biesecker 2/17/17

WASHINGTON (AP) -- Senate Republicans are poised to use their majority to confirm President Donald Trump's nominee to lead the Environmental Protection Agency, despite calls from Democrats for a delay.

A vote on Scott Pruitt's nomination is set for Friday. As part of a public records lawsuit, a state judge in Oklahoma on Thursday ordered Pruitt to release thousands of emails that he exchanged with oil and gas executives by next week. Pruitt, who is Oklahoma's attorney general, has refused to release the emails for more than two years.

Democrats boycotted a committee vote on Pruitt's nomination last month, citing his refusal to hand over the emails, and on Thursday called on Senate Majority Leader Mitch McConnell, R-Ky., to delay Pruitt's confirmation vote until the nominee turns over the thousands of requested emails from his time as attorney general.

Republican leaders, however, have shown no signs they intend to wait for the documents to be released before voting to confirm him.

"Scott Pruitt is the most thoroughly vetted nominee we've ever had to lead this agency," said Sen. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee. "These boycotts and these delay tactics do nothing to protect our environment or the health of Americans."

So far, Sen. Susan Collins of Maine is the lone Republican saying she will vote against Pruitt. Her no vote could be canceled out by Democratic Sen. Joe Manchin of coal-dependent West Virginia, who is expected to cross party lines to support Trump's pick.

To dramatize their cause, Senate Democrats kept the Senate in session through the night with a series of speeches opposing his confirmation. Democrats were still marching to the floor at daybreak.

Pruitt's nomination was strongly opposed by environmental groups and hundreds of former EPA employees, who predict he will roll back the agency's environmental enforcement efforts. During his Senate confirmation hearing last month, Pruitt said he disagreed with Trump's past statements that global warming is a hoax. However, Pruitt has previously cast doubt on the extensive body of scientific evidence showing that the planet is warming and man-made carbon emissions are to blame.

The 48-year-old Republican is closely aligned in his home state with oil and gas companies, whose executives have backed his political campaigns. Though Pruitt ran unopposed for a second term in 2014, public campaign finance reports show he raised more than \$700,000, much of it from people in the energy and utility industries.

The Center for Media and Democracy filed multiple public records requests for Pruitt's emails to coal, oil and gas corporations going back to 2015. It sued him last week.

In a hearing Thursday, Oklahoma District Court Judge Aletia Haynes Timmons concluded "there really is no reasonable explanation" for why Pruitt's office hasn't complied with the request for his emails. Timmons ordered Pruitt to turn over the records by Tuesday and to comply with other open records requests by the group in 2015 and 2016 within 10 days.

Pruitt's office says about 400 documents were turned over on Feb. 10, but Timmons says more than 3,000 have been withheld.

As attorney general, Pruitt filed 14 lawsuits challenging EPA regulations. He joined a multistate lawsuit opposing the Obama administration's plan to limit planet-warming carbon emissions from coal-fired power plants. Pruitt also sued over the EPA's recent expansion of water bodies regulated under the Clean Water Act. It has been opposed by industries that would be forced to clean up polluted wastewater.

Democrats pressed Pruitt during his confirmation hearing on whether he would recuse himself from those still-pending cases. Pruitt said he would review his involvement on a case-by-case basis and recuse himself if directed to do so by the EPA's ethics office.

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=105762276&vname=dennotallissues&wsn=498799000&searchid=29386767&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0

GOP Moves Ahead on Pruitt Despite Oklahoma E-mail Release Ruling

By Brian Dabbs 2/17/17

A vast set of e-mails traded between Oklahoma Attorney General Scott Pruitt's office and a range of fossil fuel companies must be released in the coming days, an Oklahoma judge ruled late Feb. 16, Bob Nelon, an attorney representing the watchdog group that requested the release, told Bloomberg BNA.

Senate Democrats, the vast majority of which oppose Pruitt, are already using the ruling as firepower to continue to pressure a delay on the Feb. 17-scheduled confirmation vote for the Pruitt nomination as EPA administrator.

But Republicans rejected a postponement in the immediate wake of the ruling. "[Pruitt] has fully cooperated with our committee, and the Office of Government and Ethics has determined that he has complied with all laws," Mike Danylak, spokesman for Senate Environment and Public Works (EPW) Committee Chairman John Barrasso (R-Wy.), told Bloomberg BNA. "Democrats have stalled nominees across the Senate—the EPA needs an administrator. It is time to confirm him."

Oklahoma Ruling

The watchdog, named the Center for Media and Democracy (CMD), and the Oklahoma chapter of the American Civil Liberties Union, sued the attorney general's office roughly a week ago to require disclosure of years of e-mails before Pruitt's office and companies such as Murray Energy Corp. and Devon Energy Corp. CMD lodged the request in January 2015.

At the hearing Feb. 17, Judge Aletia Haynes Timmons called the delay an "abject failure," according to Nelon, who is attorney with the Hall Estill law firm.

"The judge repeatedly asked the [attorney general's] office to explain why it would take as long as it has to respond to the request, and the attorney general's lawyers couldn't respond. They basically said we take requests in order and we're busy," said Nelon. "That was not persuasive for the judge, and she kept saying 'I'm still waiting for an explanation for why this was taking so long.'" Timmons ordered the release by Feb. 21, Nelon said.

Sen. Ed Markey (D-Mass.) pounced on the judge's ruling. "Senate Majority Leader Mitch McConnell is forcing the Senate to vote tomorrow on Pruitt even though his e-mails won't be released until Tuesday. This is an egregious cover up that must not stand," Markey said in a statement.

Repeated Delay Calls

Earlier Feb. 17, EPW Ranking Member Tom Carper (D-Del.) and other committee Democrats said the release of the e-mails are necessary for the Senate to fully vet Pruitt.

"In my gut, I feel that these e-mails, the nature of these e-mails and the entities with whom they were sent and received, will help us understand the truth," Carper said. "That opportunity is going to be denied to us." Carper, Markey and other Democrats plan to denounce Pruitt on the Senate floor through the night of Feb. 16.

Meanwhile, thirty Senate Democrats, roughly two-thirds of the caucus, urged Pruitt Feb. 16 to recuse himself from issues that he litigated as attorney general.

Pruitt is still involved in several active lawsuits against the agency, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards and methane limits for the oil and natural gas industry.

Partisan Trade-Off

Despite the rancor, a pair of Senate Democrats from energy-producing states vowed to support Pruitt's confirmation as EPA administrator, those lawmakers announced Feb. 16 as they voted to advance the Pruitt nomination to a final vote.

The endorsements from Sens. Joe Manchin (D-W.Va.) and Heidi Heitkamp (D-N.D.), both up for re-election in 2018, bolster Pruitt's chances of confirmation by the Senate. Heitkamp pledged to hold Pruitt accountable.

A spokesman for McConnell, Don Stewart, said the preliminary vote justifies quick confirmation. "A bipartisan majority of the Senate voted today to move forward with the vote," he said. That vote, which passed 54-46, limited debate and teed up the confirmation vote.

Meanwhile, Sen. Susan Collins (R-Maine) made waves after announcing her opposition to Pruitt, pointing to her support for the Clean Power Plan and bedrock environmental statutes.

"I have significant concerns that Mr. Pruitt has actively opposed and sued EPA on numerous issues that are of great importance to the state of Maine," Collins said. "His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the agency's critical mission to protect human health and the environment."

More Republican Opposition Unlikely

Two Republican senators indicated to Bloomberg BNA Feb. 17 they aren't yet fully committed to endorsing Pruitt.

Asked whether he is a "yes" vote on the nomination, Sen. Cory Gardner (R-Colo.) said he was "looking forward to the debate over the next couple hours." Sen. Tim Scott (R-S.C.), said he would "probably" support Pruitt, suggesting he doesn't "see any reason why not."

Collins said she did not know if other Republicans would oppose him. FreedomWorks, an influential conservative advocacy group, skewered Collins for her opposition.

Sen. Roy Blunt (R-Mo.), a member of the Republican leadership team in the Senate, told Bloomberg BNA Republicans will fall in line to confirm Pruitt. And Sen. John Barrasso (R-Wyo.) took to the Senate floor to encourage support.

"When the Environmental Protection Agency overstepped its mission, Attorney General Pruitt led the charge to rein in government overreach," said Barrasso. "Time after time, Scott Pruitt worked with other states to challenge the agency when it exceeded its authority. Under his leadership, this agency will respect the rule of law."

E&E News

<http://www.eenews.net/energywire/2017/02/17/stories/1060050244>

Pruitt's missing emails color Democrats' talk-a-thon

By Mike Lee and Joel Kirkland 2/17/17

OKLAHOMA CITY — The Oklahoma attorney general's office will have until Tuesday to turn over as many as 3,000 documents related to Attorney General Scott Pruitt's communications with oil, gas and coal groups, a state district judge ruled yesterday.

The legal action happened as Democrats vowed to talk all night, and they did, on the Republican attorney general's nomination to be President Trump's U.S. EPA administrator.

Yesterday, Democrats who boycotted an initial vote on Pruitt in the Senate Environment and Public Works Committee failed in their quixotic bid to delay a full Senate confirmation vote scheduled for this afternoon. Senate Majority Leader Mitch McConnell (R-Ky.) refused to put the brakes on the process, as Republicans teed up the partisan battle to get Pruitt through the door before the Senate's Presidents Day recess.

Democrats read letters from constituents and talked about missing emails, global warming, oil, ethanol standards and fearful EPA staffers.

Pruitt angered Democrats during the confirmation process when he said senators should file a state freedom-of-information (FOI) records request with the Oklahoma attorney general's office, which he controls, if they wanted to read his email communications with energy companies, conservative groups and lawyers hostile to EPA.

In press conferences and floor speeches during the day and into the night, Senate Democrats rapped Pruitt for his role as a coordinator of like-minded attorneys general and fossil fuel companies that repeatedly sued to overturn tougher EPA air and water rules under President Obama. Pruitt has his signature on more than a dozen lawsuits against the agency.

"Are you kidding me?" said Sen. Elizabeth Warren of Massachusetts. "If those emails show corruption, every senator should have that information before, not after, they put someone in charge of EPA."

In tone and focus, Pruitt's legal challenges against EPA reflected the priorities of right-leaning groups with close ties to the oil industry's Koch brothers and represented the interests of Oklahoma-based gas giant Devon Energy Corp. and politically powerful coal companies such as Peabody Energy Corp. The suits sought to stop the agency from enforcing limits on power plant emissions of carbon dioxide, a contributor to climate change, and mercury, a neurotoxin, and took aim at the Clean Water Act.

Pruitt's supporters point to his commitment to preserving state supremacy over environmental regulation and say he will rein in EPA's overreaching tendencies.

Senate Democrats, led by Sen. Tom Carper of Delaware, pinned much of their hope of stirring up opposition to Pruitt through the timely release of his office's emails with energy companies sought by the liberal-leaning Center for Media and Democracy, based in Madison, Wis.

Other than a 400-page batch of emails released last Friday, in response to the center's original unanswered request two years ago, the Senate isn't likely to see the fuller 3,000-page response to nine FOI requests for documents out of Pruitt's office before the confirmation vote.

Under the ruling, the attorney general's office will have to turn the material over to the Center for Media and Democracy or provide it to the court for inspection, Judge Aletia Haynes Timmons said at the end of a 25-minute hearing.

"The court rules there was an abject failure to provide prompt, reasonable access," Timmons said from the bench.

She ordered the state to turn over other documents, from separate requests in 2015 and 2016, within 10 days. The attorney general's office can appeal the ruling, attorneys in the case said.

Brady Henderson, an attorney for the Oklahoma Chapter of the American Civil Liberties Union, said the Senate should view the documents before voting on Pruitt's nomination. Henderson assisted other Oklahoma attorneys to represent the Center for Media and Democracy in the case.

The state's legal staff left the court building without speaking to reporters. But the attorney general's office said in a statement that it is "committed to following the letter and spirit" of the state's open records law. The statement also alluded to the office's first-come, first-served process for handling records requests, a process issue that has become a focal point of the case.

"In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others," said the AG's office.

An unusual process

The Wisconsin group has said the unusual process of handling government records requests has been a handy tool for delaying releases. The Center for Media and Democracy made its first documents request in January 2015, along with eight new requests since then, for emails and documents dating to 2013.

Pruitt's staff have continued to say they answer open records requests in the order in which they're received and that they've been overwhelmed with requests since he was nominated to lead EPA (*Energywire*, Dec. 20, 2016).

Pruitt has been Oklahoma's attorney general since 2011 and has forged close ties with energy companies. *The New York Times* reported in 2014 that he had pulled language directly from letters and legal briefs written by industry lawyers as part of his campaign to challenge federal regulations (*Greenwire*, Dec. 8, 2014).

Like most states, Oklahoma allows government agencies to withhold some documents from the public in narrowly tailored circumstances, but lawyers for the attorney general's office couldn't immediately explain why the documents hadn't been produced for more than two years.

At one point during the 25-minute hearing, Timmons interrupted Assistant Attorney General Jeb Joseph and read aloud from the state open-records statute, which says, "The people are invested with the inherent right to know and be fully informed about their government."

Among the missing documents were letters and emails that the state had previously provided to *The New York Times*, which the center said was evidence that the state withheld material in its response.

E&E News

<http://www.eenews.net/climatewire/2017/02/17/stories/1060050246>

Dems rail all night against Pruitt; vote still set for 1 p.m.

By Niina Heikkinen and Kavya Balaraman 2/17/17

Democrats staged an all-night fight in the Senate in a final play to delay a vote on the nominee they say is unfit to lead U.S. EPA.

Scott Pruitt, the Republican attorney general of Oklahoma, has been a controversial pick to lead the agency since his selection in December. In the days leading up to the full Senate vote on his nomination, Pruitt's opponents have stepped up efforts to stall or even derail it. In the final hours before his expected confirmation today, Democrats continued to press their case that Pruitt's record disqualified him from the top environmental enforcement job.

One of their main concerns: that Pruitt is not committed to EPA's goal of protecting the environment and public health.

Pruitt's statements through his confirmation that though humans affect climate change in "some manner," the science is still "unsettled" also didn't sit well with Democratic senators. Several suggested that Pruitt's rejection of climate science and attacks on environmental regulations were a direct result of the "dark money" he had received from fossil fuel donors such as Murray Energy Corp.

Sen. Sheldon Whitehouse (D-R.I.) displayed a diagram he called "The Denial Beast," which marked out the reach of the fossil fuel industry in perpetuating climate denial. He called it a "visual description of the complex matrix of fossil fuel interests that [Pruitt] has been so closely involved with."

"This is a very, very significant matrix of fossil fuel interests, and that is what Scott Pruitt has been serving, not the public and not his duties," he said.

Whitehouse and other Democrats called for a delay in the vote on Pruitt until they had a chance to carefully review records of Pruitt's communication with the fossil fuel industry. The correspondence was the subject of a lawsuit brought against the attorney general by the Center for Media and Democracy. Lawmakers noted that emailed correspondence would be available in a matter of days following a recent court ruling.

"Maybe this is just an empty concern. But over and over and over again, emails have been really important at breaking investigations open, and certainly our friends on the other side, until the election in November, had a fascination with emails," said Whitehouse. "Now, suddenly, everybody is looking at the ceiling, examining the ceiling tiles, when it's time to wonder about these emails."

Yesterday afternoon, an Oklahoma judge ruled that Pruitt would have to produce the first batch of roughly 2,500 outstanding emails that the Oklahoma attorney general had not sent in response to nine outstanding public records requests submitted by the Center for Media and Democracy (*Greenwire* Feb. 16; *Climatewire*, Feb. 15).

These first emails will include correspondence between Pruitt and fossil fuel donors, such as Devon Energy Corp., Peabody Energy Corp. and the American Petroleum Institute, to be delivered by Tuesday. The next batch, slated to come out in 10 days, will include email correspondence with the American Legislative Exchange Council, or ALEC, which supports partisan policy, according to Whitehouse.

Following the court ruling, Senate Republicans continued to deny calls to delay the vote for Pruitt, scheduled for 1 p.m. today.

"Now, that smells to the high heavens. The American people have the right to know what's in those emails," said Sen. Ed Markey (D-Mass.). He dubbed the GOP the "Gas and Oil Party."

Democrats noted that failure to analyze the emails prior to a vote could come back to bite Republicans, who would have to answer to their voters if the emails do reveal evidence of illegal activity.

Markey compared the concerns about Pruitt to those surrounding President Reagan's controversial picks to lead the Department of the Interior and EPA — James Watt and Anne Gorsuch Burford, respectively. Both Watt and Burford, the mother of current Supreme Court nominee Judge Neil Gorsuch, resigned from their posts.

Sen. Cory Booker (D-N.J.) said it is unfortunate that Republicans have chosen not allow a delay in the vote.

"We are finally getting some transparency after stonewalling for week after week and month after month. Now we are going to see what kind of potential collusion went on," he said.

Dems: Questioning climate change a disqualifier

Beginning yesterday afternoon and continuing through the night, Democrats came to the Senate floor armed with charts and anecdotes from Pruitt's record as Oklahoma attorney general to argue against his appointment.

Pruitt has filed more than a dozen legal cases against EPA regulations, including those restricting mercury pollution, smog and carbon dioxide emissions. Many cited his stance on climate change as an important factor in influencing their vote, especially since it has affected their own states.

From threatened blue crab fisheries in Maryland to warming temperatures hurting maple syrup production in New England, senators outlined how climate change is already affecting natural resources, wildlife and infrastructure across the country.

"As a result of climate change, we have seen 40 percent reduction in the moose population," said Sen. Jeanne Shaheen (D) of New Hampshire. "Because of milder winters, ticks don't die off; they multiply on moose, they ravage it and eventually kill."

Sen. Bill Nelson (D-Fla.) called his state "ground zero" for sea-level rise, citing measurements in South Florida over the past four decades that have shown a 5- to 8-inch increase in sea levels.

"Oh, and by the way, where is three-quarters of the population in Florida? It's along the coast," he said.

Sen. Al Franken (D-Minn.) pointed out that while Pruitt did not follow Trump's example in calling climate change a "hoax," his denial was more "subtle" and "intentionally deceptive."

"If we look at Mr. Pruitt's record, it shows that he has been steadfastly against action on climate change — including a suit to block the first requirements of power plants to reduce their carbon emissions," he said.

He also criticized Pruitt's implication that imposing regulations on the environment would reduce employment and economic prosperity, saying that Minnesota has managed to balance both: The state adopted a renewable energy standard in 2007, and the clean energy economy currently employs around 54,000 of its residents.

Sen. Richard Blumenthal (D-Conn.) summed up his opposition to Pruitt with one sentence.

"We have enough foxes guarding henhouses as it is in this administration," he said.

He went on to criticize Pruitt's lack of transparency, in terms of contributions from the energy industry, and his refusal to accept the scientific evidence of climate change.

"I'm not here to argue climate change. I'm here to argue that Scott Pruitt is unqualified to fight climate change because he denies it as a problem, and he denies the mission and purpose of the EPA," he said.

GOP: Stop the 'blind obstruction'

Sen. Amy Klobuchar (D-Minn.) said that she disagreed with Pruitt's claim that the "debate" on climate change is "far from settled," citing national climate assessments as well as the impacts that shifting weather patterns are having on the Midwest.

"We may not have tsunamis, but in the Midwest, what we see is major unpredictable weather, which is just as dangerous. We've seen the devastating impact of natural disasters like Hurricane Matthew, and we've seen flooding from Cedar Rapids [Iowa] to Duluth. We now know the risk of climate change to Minnesota, to the country and to our planet," she said, adding that she also opposed Pruitt's nomination on the basis of his record on the renewable fuel standard.

Sen. Elizabeth Warren (D-Mass.) spent nearly an hour on the floor issuing scorching criticisms of Pruitt, including of his "flippant, evasive and outright misleading" responses during his confirmation hearing.

"Scott Pruitt has the nerve to say that the cause of climate change is 'subject to debate.' More debate? We had that debate — in the 1980s, in the 1990s, in the 2000s. Maybe Mr. Pruitt missed it, buried under a pile of Big Oil money," she said.

Meanwhile, Republican senators scolded their Democratic counterparts for what they described as "blind obstruction" of Pruitt's confirmation process.

"These boycotts and these delay tactics do nothing to protect our environment or the health of Americans. Democrats are engaged in nothing more than political theater. They are wasting time while the Environmental Protection Agency needs a new administrator," said Sen. John Barrasso (R-Wyo.), chairman of the Environment and Public Works Committee.

Barrasso described Pruitt as the "right man for the job" to lead EPA.

"I would plead with our colleagues across the aisle: Stop the dysfunction," said Sen. John Cornyn (R-Texas). "Instead, let us fight for the people we represent and find common ground where we can and put forward legislation that represents them well."

Politico Pro

<https://www.politicopro.com/tipsheets/morning-energy/2017/02/seismic-shift-to-hit-epa-with-pruitt-confirmation-021443>

Seismic shift to hit EPA with Pruitt confirmation

By Anthony Adragna 2/17/17. 5:46AM

MR. PRUITT GOES TO EPA: Scott Pruitt is set to be confirmed today as the 14th EPA administrator, marking a massive change in the agency's direction and ushering in a new era of regulatory rollbacks. A confirmation vote is expected around 1:00 p.m. — over howls of protest from Democrats clamoring to see copies of emails Pruitt and his staff exchanged with fossil fuel lobbyists, Republican donors and others while he was Oklahoma's attorney general. A state judge Thursday afternoon ordered Pruitt to cough up as many as 3,000 emails by Tuesday in response to a liberal watchdog's longstanding public records request. As Democrats planned to hold the Senate floor all night speaking against the nomination, top Environment and Public Works Committee Democrat Tom Carper said the court's ruling "should finally give my Republican colleagues pause" and that it would "wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture" of potential conflicts of interest Pruitt would bring to the job.

Anyone who has been paying attention to President Donald Trump's campaign or transition knows what to expect from Pruitt: A major reduction in EPA's emphasis on federal oversight in favor of giving more control to the states; a severely reduced, if not reversed, focus on climate change and other clean air and water initiatives; and long-term moves to decrease funding and staff.

Welcome, boss: Meanwhile, EPA employees are already responding with unhappiness about the new jefe. A few dozen current employees publicly protested his nomination, and 773 former EPA employees have signed onto a letter opposing him. Unions organized drives for workers to call and urge their senators to vote against him, a first, according to the New York Times. And at least a few EPA employees have started using an encrypted app in case they need a private way to communicate, drawing ire from House Republicans who say they are skirting recordkeeping laws.

What's next: It has long been expected that once Pruitt is installed, Trump will sign one or more executive orders directing the agency to roll back climate change work, limit its enforcement powers or otherwise apply a lighter touch to regulation. Pruitt has a major to-do list, including shifting gear in the dozens of ongoing lawsuits challenging EPA rules and actions, starting the years-long process to repeal regulations like the Clean Power Plan and searching for the dozens of political staff required to operate EPA. Trump leaves for South Carolina this morning and Vice President Mike Pence heads to Europe in the morning as well. ME hears EPA is preparing for a Tuesday swearing in for Pruitt, but plans remain up in the air.

Sen. Jim Inhofe (R-Okla.), a close Pruitt ally, said he and Pruitt have had many discussions in the past about the challenges EPA presents to the agriculture and energy industries. "But not since he's gotten this close, I don't think he's thinking about it now," Inhofe told ME Thursday evening, explaining that he had not been given a heads up on what Pruitt's first order of business would be. "He wants to get properly staffed, and then watch him roll."

LA Times

<http://www.latimes.com/politics/la-na-pol-trump-epa-pruitt-20180217-story.html>

After bruising confirmation battle, EPA nominee Scott Pruitt expected to clear Senate vote

By Evan Halper 2/17/17

Donald Trump's embattled nominee to run the Environmental Protection Agency is expected to get final approval from the Senate on Friday after withstanding a prolonged assault from environmentalists who warn he is a menace to clean air and water.

The likely approval of Oklahoma Atty. Gen. Scott Pruitt for the post exposed an internal rift in the Democratic Party as two senators from coal country signaled they would give their support to the longtime ally of the Koch brothers and unabashed climate-change skeptic.

The Pruitt nomination has been one of the most bitterly fought since Trump took office last month, pitting a crusader for fossil fuel interests who has sued the agency he will take over 14 times against an environmental movement that is scrambling to preserve what it can of actions President Obama took to curb climate change and protect natural resources.

Pruitt will be inheriting an agency of 15,000 employees where much of the workforce will likely be openly hostile to his agenda. Nearly 800 former EPA employees signed a letter imploring lawmakers to reject his nomination, and many current employees joined the ranks of activists demonstrating against him at rallies and deluging the switchboards of congressional offices.

He distinguished himself in Oklahoma by battling many of the signature environmental protections implemented by Obama, arguing they were a federal intrusion on the states. He does not accept the mainstream scientific consensus on climate change, and has been described by the National Resources Defense Council and the Environmental Working Group as the worst nominee selected to run the EPA in history.

Washington Times

<http://www.washingtontimes.com/news/2017/feb/17/senate-dems-hold-floor-demand-delay-epa-nominee-sc/>

Senate Dems hold floor, demand delay on EPA nominee Scott Pruitt until his emails are released

By Ben Wolfgang 2/17/17

Holding the Senate floor for a talk-a-thon that will last into Friday afternoon, Democrats are demanding that the chamber delay its planned vote on Scott Pruitt's nomination to head the EPA, saying lawmakers can afford to wait a few days and learn more about his ties to the oil and gas industry.

Mr. Pruitt, Oklahoma's attorney general, was ordered by an Oklahoma judge late Thursday to turn over nearly 3,000 emails related to his communications with the oil and gas sector. The nominee has until Tuesday to turn over those documents, which Democrats argue will show that Mr. Pruitt is in the pocket of the fossil fuel industry and is unfit to lead the EPA.

Sen. Richard Durbin, Illinois Democrat, took to the Senate floor about 8:30 a.m. Friday and said Republicans who vote in favor of Mr. Pruitt will be sorry after they see the emails next week.

"Be careful about the vote you cast at 1 o'clock today because by 1 o'clock on Tuesday or Wednesday in the following week you may regret that vote," he said. "The Republican senators and Mitch McConnell said we don't want to read [the emails]. We don't care what's in them. ... Scott Pruitt can wait 10 days and we can wait for the truth, can't we?"

Senate Majority Leader Mitch McConnell's office said Thursday night the final vote on Mr. Pruitt will go ahead Friday afternoon as scheduled, despite the Oklahoma judge's ruling.

Democrats held the Senate floor all night Thursday and into the morning Friday to protest that decision, though their efforts likely will fail.

"It would be wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture," Sen. Tom Carper, Delaware Democrat and his party's ranking member on the Senate Environment and Public Works Committee, said Thursday night. "If we are going to do the job that the American people sent us here to do, we must carefully review this new information in order to better evaluate just what kind of EPA Administrator Scott Pruitt would be."

In raising concerns about what could be in the emails, Democrats point to a 2011 letter sent by Mr. Pruitt to the EPA, raising questions about the agency's conclusions regarding harmful emissions from natural gas wells. The majority of the language in the letter was lifted directly from documents written by Devon Energy, an Oklahoma oil and gas company.

During testimony before a Senate panel last month, Mr. Pruitt didn't deny using the company's language, but said it was his job as Oklahoma attorney general to advocate on behalf of his state's interests, including the interests of major industries in the state like the oil and gas sector.

Democrats have blasted Mr. Pruitt's logic in that particular situation and believe the looming email trove will show other examples of collusion between the two sides.

Despite the uproar, Mr. Pruitt almost surely will be approved in Friday's vote. While one Republican, Sen. Susan Collins of Maine, has said she'll vote against him, two Democrats will back Mr. Pruitt.

Sen. Joe Manchin of West Virginia and Sen. Heidi Heitkamp of North Dakota have said they'll vote in favor of the nomination, likely ensuring Mr. Pruitt's approval, unless Republican leaders change course and delay the vote.

Huffington Post

http://www.huffingtonpost.com/entry/elizabeth-warren-scott-pruitt_us_58a6881ae4b07602ad53435c

Sen. Elizabeth Warren Slams Pruitt: 'Big Polluters Have Their Fantasy EPA Nominee'

By Nick Visser 2/17/17

Sen. Elizabeth Warren (D-Mass.) denounced President Donald Trump's nominee to head the Environmental Protection Agency, Scott Pruitt, just hours before the Senate was scheduled to vote on his approval.

Warren spent nearly an hour on the floor Thursday evening to voice her "strong opposition" to Pruitt, the Oklahoma attorney general who has sued the EPA 13 times. The excoriation came hours after a state judge ordered Pruitt's office to release more than 2,500 documents and emails about his communications with energy companies during his tenure.

"I rise today to express my strong opposition to President Trump's nomination of Scott Pruitt," Warren said at the outset of her speech. "The reason is simple: In a choice between corporate polluters and people who want to breathe air and drink water, Scott Pruitt sides with the corporate polluters. He has no business as head of the EPA."

The Senate is scheduled to vote on Pruitt's nomination Friday afternoon, just days before the documents and emails are made public. An incredulous Warren demanded senators be given access to the communications to make an informed decision on the nomination and called for a bipartisan effort to ensure "access to clean air and clean water [as] a basic right for all Americans."

“Their plan is to jam this nomination through tomorrow, four days before the emails are slated to become public. Are you kidding me?” she asked. “If those emails show corruption, every senator should have that information before, not after, they vote to put someone in charge of the EPA who may be there for years.”

She continued:

Clean air and clean water used to be a nonpartisan issue. In earlier decades, leaders in both parties had the courage to say no to suffocating smog and towering plumes of toxic chemicals poisoning our children. Republicans and Democrats came together, and together they declared that access to clean air and clean water is a basic right for all Americans. We passed the Clean Air Act, we passed the Clean Water Act ... we did those things together.

Many leading Democrats have also expressed outrage over the vote.

Pruitt’s nomination has prompted widespread fear among environmentalists and staff currently at the EPA. Since 2002, Pruitt has received more than \$300,000 in contributions from the fossil fuel industry, and on his LinkedIn page, he lists himself as “a leading advocate against the EPA’s activist agenda.”

This week, nearly 800 former agency staffers signed a letter in protest of his nomination. The letter called Pruitt “a close ally of the oil and gas industry [who] has made a career of suing EPA and attacking the idea of federal action to reduce pollution — while simultaneously failing to enforce environmental laws in his own state and shutting down the Environmental Protection Unit in the Oklahoma Attorney General’s Office.”

Warren echoed these fears and what she called Pruitt’s continual support for “his friends in the oil industry ... to heck with everybody else.”

“Those big polluters have their fantasy EPA nominee, someone who will work on their side and not on the side of the American people.”

The Hill

<http://thehill.com/policy/energy-environment/320041-epa-employees-call-on-senators-to-reject-trump-epa-pick>

EPA Employees call on senators to reject Trump EPA pick: report

By Max Greenwood 2/16/17, 9:19PM

In an unusual show of opposition for federal employees, Environmental Protection Agency workers have been calling their senators to urge them to reject President Trump’s pick to lead their agency, The New York Times reported Thursday.

Scott Pruitt, the attorney general of Oklahoma, has sued the EPA more than a dozen times in his current post, alarming many of the agency’s employees, who fear that, if confirmed, he will work to dismantle its work.

On the campaign trail, Trump railed against the environmental agency, calling it a “disgrace” and vowing to undo federal environmental rules and regulations.

“Mr. Pruitt’s background speaks for itself, and it comes on top of what the president wants to do to EPA,” John O’Grady, a longtime EPA employee and president of the union representing its workers, told The Times.

Still, the effort to rally the opposition of enough senators to reject Pruitt during his confirmation vote on Friday is a longshot. Only one GOP senator, Susan Collins (Maine), has said she will vote against Trump’s EPA pick. And Democratic Sens. Joe Manchin (W.V.) and Heidi Heitkamp (N.D.) have both said they will support Pruitt.

Even with the expected absence of Sen. John McCain (R-Ariz.), who is set to attend a security conference in Germany on Friday, Pruitt will likely win the support of 52 senators, securing confirmation.

It is unusual for civil servants, such as EPA employees, to so actively oppose a Cabinet appointee. What is more, The Times reports, the move signifies that Pruitt will likely face strong pushback from his own employees once he takes office.

“What it means is that it’s going to be a blood bath when Pruitt gets in there,” former New Jersey Gov. and past EPA administrator Christine Todd Whitman (R) told The Times.

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Appointment

From: Edwards, Crystal [Edwards.Crystal@epa.gov]
Sent: 4/10/2017 7:53:14 PM
To: Peck, Gregory [Peck.Gregory@epa.gov]; Loop, Travis [Loop.Travis@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Frithsen, Jeff [Frithsen.Jeff@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Stokely, Peter [Stokely.Peter@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]; FertikEdgerton, Rachel [FertikEdgerton.Rachel@epa.gov]; Borum, Denis [Borum.Denis@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Lousberg, Macara [Lousberg.Macara@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]; Lamont, Douglas W SES (US [douglas.w.lamont2.civ@mail.mil]; Schmauder, Craig R SES (US [craig.r.schmauder.civ@mail.mil]; Cindy Barger [cindy.s.barger.civ@mail.mil]; McGartland, Al [McGartland.Al@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]
CC: Thomas, Latosha [Thomas.Latosha@epa.gov]
Subject: WOTUS Call in: **Conference Line/Code / Ex. 6**
Attachments: Agenda -- WOTUS 12 April 2017 v2.docx
Location: 3233 WJCE
Start: 4/12/2017 2:00:00 PM
End: 4/12/2017 2:45:00 PM
Show Time As: Tentative

**AGENDA
WOTUS MEETING**

Wednesday, April 12, 2017

10:00-10:45am

WJC EAST 3233

Telecom:

Conference Line/Code / Ex. 6

Deliberative Process / Ex. 5

Message

From: silver.wendy@epa.gov [silver.wendy@epa.gov]
Sent: 3/28/2017 7:54:45 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: ***ACTION REQUIRED*** - Revised Litigation Hold notice regarding City of Colorado Springs potential CWA violations

Flag: Flag for follow up

Attorney Work Product / Ex. 5

This email is intended for the sole use of the intended recipient(s) and contains material that is privileged attorney-client communication and/or subject to the attorney work product doctrine. Any review, reliance, distribution, or forwarding without express permission by the sender is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies

Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 4/19/2017 3:04:27 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; McGartland, Al [McGartland.Al@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: 11:00 meeting reminder: 3500 WJCN - the line is open (Thank you)

-----Original Appointment-----

From: Inge, Carolyn **On Behalf Of** Dravis, Samantha
Sent: Tuesday, April 18, 2017 1:15 PM
To: Dravis, Samantha; Michael.J.Catanzaro@who.eop.gov; Anthony.P.Campau@omb.eop.gov; Bolen, Brittany; Schwab, Justin; McGartland, Al; Greenwalt, Sarah; Fotouhi, David; Nickerson, William
Cc: Inge, Carolyn; Kime, Robin; Irving, Verna
Subject: WOTUS and CPP Call - Conference Line/Code / Ex. 6
When: Wednesday, April 19, 2017 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomARN3500/OPEI

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 4/28/2017 5:07:36 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]
Subject: RE: Reporter seeking comment on executive orders and agency vacancies

Okay thanks.

From: Fotouhi, David
Sent: Friday, April 28, 2017 12:45 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: Reporter seeking comment on executive orders and agency vacancies

Deliberative Process/AC Ex. 5

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Bowman, Liz
Sent: Friday, April 28, 2017 11:31 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: Reporter seeking comment on executive orders and agency vacancies

Deliberative Process/AC Ex. 5

From: Schwab, Justin
Sent: Friday, April 28, 2017 11:26 AM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: Reporter seeking comment on executive orders and agency vacancies

Deliberative Process/AC Ex. 5

From: Wilcox, Jahan
Sent: Friday, April 28, 2017 11:25 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: FW: Reporter seeking comment on executive orders and agency vacancies

Deliberative Process/AC Ex. 5

From: Keith Goldberg [<mailto:keith.goldberg@law360.com>]
Sent: Friday, April 28, 2017 11:12 AM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: Reporter seeking comment on executive orders and agency vacancies

Thanks, Jahan.

Wanted to see if the EPA wanted to comment on the D.C. Circuit placing the Clean Power Plan litigation on hold. If you could get back to me ASAP, I'd appreciate it.

On Thu, Apr 27, 2017 at 2:23 PM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

Keith –

It was good talking with you. Below is our statement and research bullets.

EPA Statement ...

“EPA was the poster child for regulatory overreach in the Obama Administration. Since being sworn in, Administrator Pruitt and his team have spearheaded over 22 significant regulatory reform actions, putting him at the forefront of President Trump’s vision to rollback regulations, save American jobs and promote economic growth. We’re not worried about our ability to give power back to the state, and protect health and the environment in a way that doesn’t impede economic growth because we’ve already made great strides.” – EPA spokesman, Jahan Wilcox

RESEARCH BULLETS ...

GEARING UP FOR DAY 100: Energy and environmental issues offer perhaps the most concrete accomplishments for President Donald Trump to point to as he nears the 100-day mark of his presidency. He's signed four energy-related resolutions wiping out Obama-era rules, put in place Cabinet officials dedicated to rolling back other regulations and unleashed a steady stream of executive orders and photo ops designed to reach his promise of U.S. energy independence. But whether any of this turns into a lasting legacy for Trump largely depends on what happens from here. His Cabinet lacks the political staff to follow up on his efforts undo rules like EPA's Clean Power Plan and Waters of the U.S., and there will be years of litigation over every move undoing regulations on the books. And his actions appear to have awoken scores of citizens opposed to his environmental deregulatory agenda (see below). More to come on this front as we near the actual date later this week. (Politico’s Morning Energy, 04/24/17)

An executive order was issued to rescind WOTUS. “President Trump and EPA Administrator Scott Pruitt

issued an executive order to rescind or revise the 2015 Clean Water Rule: Definition of 'Waters of the United States.'" ([Press Release](#), 02/28/17)

An executive order was issued to rescind the so-called Clean Power Plan. "Today, at the Environmental Protection Agency surrounded by American energy workers, public employees and members of Congress, President Donald Trump signed the Energy Independence Executive Order to protect thousands of jobs and strengthen energy security, while also ensuring that our policies provide clean air and clean water for all of our citizens." ([Press Release](#), 03/28/17)

The EPA will resume cleanup at the East Chicago Superfund site. "The U.S. Environmental Protection Agency (EPA) is preparing to resume cleanup work in zones 2 and 3 of the USS Lead Superfund site in East Chicago in April. EPA has reached an agreement with several potentially responsible parties to fund part of this work valued at an estimated \$16 million -- in addition to the \$26 million already secured for work under a 2014 consent decree." ([Press Release](#), 03/20/17)

EPA Administrator Scott Pruitt toured lead-contaminated areas in East Chicago. "During Pruitt's visit, his first to a Superfund site since being appointed administrator, he toured the Calumet neighborhood, met with local, state and federal officials, and talked with residents and community members about how the lead and arsenic contamination has affected their lives. 'The reason I'm here is that it's important that we restore confidence to people here in this community that we're going to get it right,' Pruitt said. The EPA's objective is to come in and make sure people's health is protected, and that their land and health are secure in the long run, Pruitt said. 'We're committed to doing that,' Pruitt said." ([Chicago Tribune](#), 04/19/17)

The NAACP praised Pruitt for visiting the East Chicago Superfund Site and said they are cautiously optimistic about the EPA's Administrator. "It was the first superfund site EPA Administrator Scott Pruitt has visited -- making a trip there Wednesday -- and the agency said he was the first administrator to visit this particular site. Pruitt visited "to discuss cleanup and hear directly from East Chicago residents affected by contamination in their community," the agency said in a press release. At a press conference, local officials praised Pruitt for visiting the site ... Barbara Bolling-Williams, state president of the Indiana branch of the NAACP, said she is cautiously optimistic following Pruitt's visit." ([CNN](#), 04/19/17)

EPA awarded \$100 million to upgrade drinking water in Flint, Michigan. "The U.S. Environmental Protection Agency (EPA) today awarded a \$100 million grant to the Michigan Department of Environmental Quality to fund drinking water infrastructure upgrades in Flint, Mich." ([Press Release](#), 03/17/17)

The EPA kicks-off cleanup at the West Oakland Superfund site. "[The EPA] joined local leaders and community members in Oakland to celebrate the installation and start-up of a new groundwater and soil treatment system at the AMCO Chemical Superfund Site." ([Press Release](#), 03/18/17)

EPA committed additional funds surround the Gold King Mine release, bringing the total to \$29 million. "The U.S. Environmental Protection Agency (EPA) has provided over \$90,000 in additional reimbursements to five entities in Colorado and Utah for their costs incurred responding to the August 5, 2015, Gold King Mine release." ([Press Release](#), 03/16/17)

EPA to reexamine emission standards for cars and light duty trucks. "'These standards are costly for automakers and the American people,' said EPA Administrator Scott Pruitt. 'We will work with our partners at DOT to take a fresh look to determine if this approach is realistic. This thorough review will help ensure that this national program is good for consumers and good for the environment.'" ([Press Release](#), 03/15/17)

EPA Administrator seeks additional time to review RMP Rule. "Administrator Scott Pruitt signed a proposed rule this week to further delay the effective date of EPA's Risk Management Program (RMP) Amendments to allow EPA time to complete the process for reconsidering the RMP Amendments issued on January 17, 2017." ([Press Release](#), 03/31/17)

EPA extended the comment period on the Hard Rock Mining proposed rule that could cost businesses \$171 million annually. "The Environmental Protection Agency today issued a 120-day extension of the comment period related to proposed financial responsibility requirements for the hard rock mining industry. The Agency has received dozens of requests to extend the comment period. EPA estimates predict the implementation of these requirements would cost American businesses up to \$171 million a year." ([Press Release](#), 02/24/17)

From: Keith Goldberg [<mailto:keith.goldberg@law360.com>]
Sent: Thursday, April 27, 2017 11:29 AM
To: Press <Press@epa.gov>
Subject: Reporter seeking comment on executive orders and agency vacancies

I'm working on a story taking a look at the executive orders issued by President Trump directing the EPA to review and potentially revise rules including the Clean Power Plan and the methane rule. I'd like to know how concerned the agency is about its ability to carry out the orders - and in a timely fashion - with still so many agency vacancies - deputy administrator, office of air and radiation administrator, etc. - and no permanent candidates having been nominated yet.

If you could get back to me ASAP, I'd appreciate it.

--

Best,

Keith Goldberg
Senior Reporter, Energy



Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
Phone: (646) 783-7187
Mobile: (646) 450-3346

E-mail: keith.goldberg@law360.com



@kdgscribe



@Energy Law360

--

Best,

Keith Goldberg
Senior Reporter, Energy



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111 West 19th Street
5th Floor
New York, NY 10011
Phone: (646) 783-7187
Mobile: (646) 450-3346
E-mail: keith.goldberg@law360.com



@kdgscribe



@Energy Law360

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 4/3/2017 6:16:06 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: SSM SIP Call recusal issue

Justina

Here are what I think are all the relevant (and perhaps some irrelevant) facts about the SSM SIP Call:

Attorney Client / Ex. 5

Justin is recused from the litigation on SSM SIP Call because OK is a party to the lawsuit.

Is Justin recused from participating in issues related to the national SSM SIP Call policy (which might affect Oklahoma)? It would also be good to know whether the Administrator is recused.

If you need more info – please let me know.

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Schwab, Justin
Sent: Friday, March 31, 2017 5:55 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: SSM SIP Call recusal issue

I think the ethics folks will have to weigh in here and have copied them for that purpose.

Sent from my iPhone

On Mar 31, 2017, at 5:40 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Justin

Before I set up a briefing for you on SSM SIP Call, I need to check another recusal issue with you.

Here is what I understand –

- you are recused from the litigation because Oklahoma is a litigant.
- You do not have a recusal issue on Texas's petition for reconsideration stemming from any relationship you have with Texas.

Attorney Client / Ex. 5

If it would be helpful for me to talk to you about this – or to Justina, let me know.

If you know the answer for the Administrator, that would also be helpful.

Thanks

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Message

From: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Sent: 4/25/2017 10:35:53 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Shapiro, Mike [Shapiro.Mike@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Peck, Gregory [Peck.Gregory@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; David.F.Dale@usace.army.mil; Cooper, David R SES USARMY CEHQ (US) [David.R.Cooper@usace.army.mil]; Craig R SES (US) Schmauder [craig.r.schmauder.civ@mail.mil]; Cindy Barger [cindy.s.barger.civ@mail.mil]; Vail, Timothy R LTC USARMY HQDA ASA CW (US) [timothy.r.vail.mil@mail.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US) [Jennifer.A.Moyer@usace.army.mil]; Jensen, Stacey M CIV USARMY HQDA (US) [Stacey.M.Jensen@usace.army.mil]

Subject: materials for Wednesday 10:00 waters meeting

Attachments: **A-C / Deliberative Process / Ex. 5**

A-C / Deliberative Process / Ex. 5

Flag: Flag for follow up

All,

Please find attached the latest version of the draft step 1 preamble, the draft tribal consultation slides [please review slide 12] and draft script for Thursday's tribal webinar.

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

Message

From: Hupp, Sydney [hupp.sydney@epa.gov]
Sent: 3/26/2017 3:23:54 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Jackson, Jennifer L. [Jackson.Jennifer@epa.gov]; Caldwell, James [Caldwell.James@epa.gov]; Konkus, John [konkus.john@epa.gov]; Willis, Sharnett [Willis.Sharnett@epa.gov]
Subject: March 26-April 2 Line x Line
Attachments: March 26-April 2, 2017 Line x Line .docx

Happy Sunday everyone! Please see the attached LXL for the week. I will begin sending this out daily to reflect the next 7 days. Please note that it will change constantly so moving forward it is best to always reference the most recent version sent. Don't hesitate to tell me if something is incorrect or if improvements can be made. Looking forward to seeing you all tomorrow!

-Sydney

Message

From: Freire, JP [Freire.JP@epa.gov]
Sent: 4/28/2017 5:06:00 PM
To: Bowman, Liz [Bowman.Liz@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Konkus, John [konkus.john@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: CPP decision

That's not quite right.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: Personal Phone / Ex. 6

On Apr 28, 2017, at 12:59 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

We have talked about CPP often without talking to DOJ...that's fine, but it would have been good to get some heads up b/c we want to make sure that we are included in the stories on this. We cant miss the opportunity to comment on such a big issue that is important to the president and ESP. We can coordinate with DOJ for updated/moving forward? Is that Wynn? What is his number again?

From: Fotouhi, David
Sent: Friday, April 28, 2017 12:46 PM
To: Freire, JP <Freire.JP@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: CPP decision

Agreed

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Freire, JP
Sent: Friday, April 28, 2017 12:42 PM

To: Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: Fwd: CPP decision

We have to coordinate with doj.

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: Attorney Client / Ex. 5

Begin forwarded message:

From: "Valentine, Julia" <Valentine.Julia@epa.gov>
Date: April 28, 2017 at 12:39:48 PM EDT
To: "Freire, JP" <Freire.JP@epa.gov>
Subject: FW: CPP decision

Julia P. Valentine
Assoc. Dir./Acting Dir.
U.S. EPA, Ofc of Media Relations
202.564.2663 direct
202.740.1336 m/txt

From: Hornbuckle, Wyn (OPA) [<mailto:Wyn.Hornbuckle@usdoj.gov>]
Sent: Friday, April 28, 2017 12:33 PM
To: Millett, John <Millett.John@epa.gov>; Senn, John <Senn.John@epa.gov>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Valentine, Julia <Valentine.Julia@epa.gov>
Subject: RE: CPP decision

Thanks John,
DOJ needs to clear any statements before they go out, as with all litigation. I'll flag this for the team

From: Millett, John [<mailto:Millett.John@epa.gov>]
Sent: Friday, April 28, 2017 12:17 PM
To: Senn, John <Senn.John@epa.gov>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Valentine, Julia <Valentine.Julia@epa.gov>
Subject: Re: CPP decision

Here's the statement I've seen -- recommend connecting with Jahan

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

John Millett
202.510.1822

On Apr 28, 2017, at 11:50 AM, Senn, John <Senn.John@epa.gov> wrote:

Probably John Millett from our air office and Julia Valentine from our press shop—cc'ing both of them on this email. Not sure the degree to which our counsel's office has been involved with language, but John & Julia should know.

Thanks,
John

From: Hornbuckle, Wyn (OPA) [<mailto:Wyn.Hornbuckle@usdoj.gov>]
Sent: Friday, April 28, 2017 11:21 AM
To: Senn, John <Senn.John@epa.gov>
Subject: CPP decision

John – Can you remind me real quick who I should coordinate with on CPP ruling, and phone and email address if you have it?

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 4/27/2017 5:53:48 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Shapiro, Mike [Shapiro.Mike@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]
CC: Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: **Attorney Client / Ex. 5**

Wanted to pass along al's message below to you all fyi to know this is being teed up for Samantha by al.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: McGartland, Al
Sent: Thursday, April 27, 2017 1:30 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

Hi Steve. As promised I'm trying to discuss with my boss. I think what you wrote accurately reflects the path we discussed. There are several fire drills today. But I'm hoping to close loops soon.

Sent from my iPhone

On Apr 27, 2017, at 1:15 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

I had sent the urgent message below this morning but hearing that no one received it, so am resending.

Could ONE person please reply to all to confirm receipt?

Thanks.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Neugeboren, Steven
Sent: Thursday, April 27, 2017 11:27 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik

<Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Kevin Minoli <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW <Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al <McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki <Clark.Beki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Lorie Schmidt <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>

Subject:

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Importance: High

I am sending this to all the EPA folks that are invitees to the Wednesday morning WOTUS meetings.

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-548

Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 3/9/2017 4:47:57 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]

Subject:

Attachments:

Attorney Client / Ex. 5

Kevin and Justin,

Attorney Client / Ex. 5

Please let me know if you have follow up questions. Thanks.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 3/16/2017 10:32:19 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Schwab, Justin [schwab.justin@epa.gov];
mandy_gunasekara@epw.senate.gov
Subject: FW:
Attachments: **Attorney Client / Ex. 5**

From: Catanzaro, Michael J. EOP/WHO [mailto:
Sent: Thursday, March 16, 2017 6:23 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject:

EOP / Ex. 6

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/23/2017 1:15:52 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!

Hi Justin- Just saw this this morning; sorry about the mix up! I don't need to bother you if you are off-site and am happy to catch up when you get in, but call me if you need me: Personal Phone / Ex. 6 Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 23, 2017, at 5:59 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Kevin - unfortunately I will not be able to be at that breakfast - I apologize profusely for this - I replied "maybe" to that invitation (did not realize that I was supposed to be the featured guest at it!) - I realize now I should have replied "decline" instead - I will be offsite then for a meeting which I told Elise about yesterday evening - I thought she would tell you and I did not want to bother you with another phone call because I knew how stressed you were yesterday.

****Please call when you get this and I will explain in more detail why I cannot be there.**** I will try to call around 8:15 in any event. You all should of course still get together anyway and please convey my apologies. To those I have already met, please let them know I have enjoyed working with them so far and look forward to more of it. To those I have not yet met, please let them know that I look forward to meeting as many of them as possible as soon as possible.

Sent from my iPhone

On Mar 22, 2017, at 11:19 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Hi Everyone-

It is my pleasure to officially welcome Justin Schwab to OGC as a new Deputy General Counsel. Some of you have already met and worked with Justin as he was the legal POC for the transition team.

Justin comes to us from Baker & Hostetler, where for the past four years he specialized in the Clean Air Act and researched and drafted briefs (including to the Supreme Court) on various environmental issues. Prior to that he clerked for two Judges, the Hon. Richard Wesley, United States Court of Appeals for the Second Circuit, and the Hon. Christine Durham, Utah Supreme Court. He is a graduate of Yale Law School, where he was Editor-in-Chief of the Yale Journal of Law & the Humanities, as well as serving as an editor on the Yale Journal on Regulation. We are looking forward to seeing his gimlet eye cast over OGC's written opinions! Justin also has a PhD in Classics from the University of California at Berkeley. So all our Cicero scholars, here's your chance to reinvigorate those rusty skills!

Justin is sitting in 4020 and I encourage you all to come get to know him. We are delighted that he has joined the OGC team, please come to a breakfast in the Front Office Thursday morning (that's today) and welcome and/or meet him!

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Sent: 4/4/2017 6:47:22 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Subject: FW: Short Briefings Schedule -
Attachments: One page briefing paper [Deliberative Process / Attorney-Client / Ex. 5 / Ex. 7(a), (e)] docx; [] Briefing Paper.docx; [] one pager_v2.docx

Attached are the briefing papers for tomorrow's short briefings.

Justin – I have printed copies for you.

Thanks!
Shaun

Shaun R. Trudeau
Attorney-Advisor
Operational Special Assistant to the Principal Deputy
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202.564.5127

From: Trudeau, Shaun
Sent: Monday, April 03, 2017 2:28 PM
To: Michaud, John <Michaud.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>
Cc: Lewis, Jen (Lewis.Jen@epa.gov) <Lewis.Jen@epa.gov>; Sweeney, Stephen <Sweeney.Stephen@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Prabhu, Aditi (Prabhu.Aditi@epa.gov) <Prabhu.Aditi@epa.gov>; Kohutiak, George <kohutiak.george@epa.gov>; Askew, Wendel <Askew.Wendel@epa.gov>; Bove, James <Bove.James@epa.gov>
Subject: Short Briefings Schedule -

Good afternoon everyone,

I spoke with Justin and David concerning the short briefing topics for this Wednesday. Below is the schedule:

1. [] CRFLO – 25 minutes (1:00-1:25)
2. [] WLO – 15 minutes (1:25-1:40)
3. [] SWERLO – 15 minutes (1:40-1:55)

As per usual, please submit a 1-page briefing paper for your topic by 3:00PM tomorrow (Tuesday). CRFLO—I have the revised paper you previously provided.

Please let me know if you have any questions or concerns.

Thanks!
Shaun

Shaun R. Trudeau
Attorney-Advisor
Operational Special Assistant to the Principal Deputy
Office of General Counsel

U.S. Environmental Protection Agency
Office: 202.564.5127

Message

From: Graham, Cheryl [Graham.Cheryl@epa.gov]
Sent: 4/3/2017 5:38:46 PM
To: OGC Immediate Office All [OGC_Immediate_Office_All@epa.gov]
CC: Jones, Gail-R [Jones.Gail-R@epa.gov]
Subject: 4/3/17 ARLO reg review agenda
Attachments: 17-04-03 agenda.docx

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/25/2017 10:28:28 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: WOTUS meeting conflict

Sarah:

FYI, there is a briefing on the MATS litigation tomorrow morning at the same time as the weekly WOTUS meeting. Justin is recused from that litigation at this time, so I will attend the MATS briefing and Justin will attend the WOTUS meeting.

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

Message

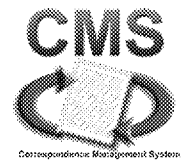
From: Hope, Brian [Hope.Brian@epa.gov]
on behalf of EPAExecSec [EPAExecSec@epa.gov]
Sent: 3/30/2017 7:55:59 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Leavy, Jacqueline [Leavy.Jacqueline@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Burden, Susan [Burden.Susan@epa.gov]; Hautamaki, Jared [Hautamaki.Jared@epa.gov]; Threet, Derek [Threet.Derek@epa.gov]; Fonseca, Silvina [Fonseca.Silvina@epa.gov]; Gaines, Cynthia [Gaines.Cynthia@epa.gov]
Subject: Daily Reading File - March 30, 2017
Attachments: Daily Reading File.3.30.17.pdf



Correspondence Management System

Control Number: AX-17-000-6852

Printing Date: March 29, 2017 04:46:33



Citizen Information

Citizen/Originator: Gloria, Todd

Organization: Assembly California Legislature

Address: State Capitol, P.O. Box 942849, Sacramento, CA 94249-0078

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6852

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Apr 13, 2017

of Extensions: 0

Letter Date: Mar 16, 2017

Received Date: Mar 29, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: RA-R9-Regional Administrator - Region 9

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Sewage spill in the Tijuana River

Instructions: RA-R9-Prepare draft response for signature by the Regional Administrator for Region 9

Instruction Note: N/A

General Notes: N/A

CC: OCIR - Office of Congressional and Intergovernmental Relations
OLEM - Office of Land and Emergency Management
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R9	Mar 29, 2017	Apr 13, 2017	N/A
Instruction: RA-R9-Prepare draft response for signature by the Regional Administrator for Region 9					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Assembly California Legislature



TODD GLORIA
ASSEMBLYMEMBER, SEVENTY-EIGHTH DISTRICT

RECEIVED
2017 MAR 29 AM 11:03

OFFICE OF THE
EXECUTIVE SECRETARIAT

March 16, 2017

The Honorable Rex W. Tillerson
Secretary of State
United States Department of State
2201 C Street NW
Washington, D.C. 20520

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Secretary Tillerson and Administrator Pruitt,

It is with the utmost concern that I write to you regarding the recent approximation of the 143 million gallon sewage spill in the Tijuana River, the worst sewage spill in the region in over a decade to impact our waters along Southern California.

According to the International Boundary and Water Commission's (IBWC) report, the discharge occurred February 6th through February 23rd, 2017. While a multitude of inquiries were made during this time to the IBWC, the City of Imperial Beach's requests for information were blatantly ignored. The health of my constituents has been negatively impacted by the contaminated waters and failing to notify the public of this environmental disaster is unconscionable.

I am grateful for the efforts put forth by our region's leaders, including Congressman Scott Peters and Congressman Juan Vargas, imploring our federal government to prioritize the health and wellbeing of our residents and their families along the coastal shoreline. What happened was unacceptable and the families in our districts and neighboring communities, on both sides of the border, deserve better.

The decision made by your respective departments to further investigate and allocate the necessary time and resources to resolve this ongoing issue has reassured our constituents that our federal government is working to protect the US-Mexico border region.



Printed on Recycled Paper

I respectfully request that you continue to work in collaboration with the affected municipalities in San Diego County, and hold those responsible for the lack of attention given to this spill accountable for their reckless and negligent conduct. It is my hope that the investigation by the IBWC will result in improved communication ensuring that a failure of this magnitude doesn't happen again.

Thank you for your attention and consideration of this request. If I can be a resource for you, please do not hesitate to contact me.

Sincerely,



TODD GLORIA
Assemblymember, 78th District

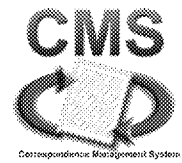
cc: The Honorable Juan Vargas, Member of Congress, 51st Congressional District
The Honorable Scott Peters, Member of Congress, 52nd Congressional District
The Honorable Edward Drusina, Commissioner, International Boundary and
Water Commission, U.S. Section
The Honorable Serge Dedina, Mayor, City of Imperial Beach, California
The Honorable Kevin Faulconer, Mayor, City of San Diego, California



Correspondence Management System

Control Number: AX-17-000-6859

Printing Date: March 29, 2017 04:38:52



Citizen Information

Citizen/Originator: Good, Lynn J.

Organization: Duke Energy

Address: 550 South Tryon Street, Charlotte, NC 28202

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6859

Alternate Number: N/A

Status: For Your Information

Closed Date: N/A

Due Date: N/A

of Extensions: 0

Letter Date: Mar 16, 2017

Received Date: Mar 29, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: SNR-Signature Not Required

Signature Date: N/A

File Code: 401_127_a General Correspondence Files Record copy

Subject: DRF - Thank you to the Administrator for meeting; Looking forward to collaborating on efforts to improve the regulatory development process

Instructions: For Your Information -- No action required

Instruction Note: N/A

General Notes: Thank you note from the Administrator under control number AX-17-000-6407 (jl)

CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Jacqueline Leavy	OEX	OP	Mar 29, 2017

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Control Created	Mar 29, 2017
Jacqueline Leavy	OEX	Forward control to OP	Mar 29, 2017

Comments



Lynn J. Good
Chairman, President & CEO
Duke Energy Corporation
550 South Tryon Street
Charlotte, NC 28202

Mailing Address:
DEC 48 / P.O. Box 1321
Charlotte, NC 28201

phone: 704.382.7649
fax: 980.373.1820

March 16, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

It was a pleasure meeting you in Houston during CERAWEEK. I enjoyed our conversation and your luncheon remarks outlining your vision for transforming the Environmental Protection Agency to focus on both protecting the environment and supporting economic growth. And, I appreciated your remarks at the EEI CEO meeting earlier this week where you highlighted your focus on process, the rule of law and cooperative federalism.

During our conversation in Houston, we talked about the importance of streamlining the siting and permitting process for projects such as pipelines and grid investments. A more streamlined approach would help accelerate the industry's infrastructure investments and enable us to continue providing affordable, reliable electricity and natural gas to consumers and businesses.

It also was heartening to hear your plan to better utilize EPA's Office of Policy. For capital-intensive companies like ours, regulatory stability enables the long-range planning necessary to invest in infrastructure that our customers value. A more active Office of Policy could improve the quality and effectiveness of regulations by ensuring a transparent decision-making process that evaluates a wide range of considerations.

Your remarks at EEI suggesting regular collaboration and engagement to look at the regulatory horizon, five and ten years ahead, were heartening. I look forward to working with you and supporting that effort. I have asked my team to follow up with Samantha to see how we can be of assistance on this and other efforts to improve the regulatory development process.

Scott, I wish you all the best as you begin your journey leading the agency. As I said during our meeting, we welcome the opportunity to work with you on these important issues and serve as a resource for you and your team. Please don't hesitate to contact me at any time.

Sincerely yours,

Lynn J. Good
Chairman, President & CEO

OFFICE OF THE
EXECUTIVE SECRETARIAT

2017 MAR 29 AM 11:08

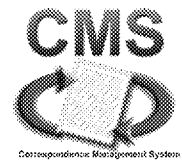
RECEIVED



Correspondence Management System

Control Number: AX-17-000-6871

Printing Date: March 30, 2017 10:59:24



Citizen Information

Citizen/Originator: Wade, Sam

Organization: National Rural Water Association
Address: 2915 South 13th Street, Duncan, OK 73533

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6871 **Alternate Number:** 7787 5574 2946
Status: Pending **Closed Date:** N/A
Due Date: Apr 14, 2017 **# of Extensions:** 0
Letter Date: Mar 27, 2017 **Received Date:** Mar 29, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AA-OW-Assistant Administrator - Signature Date: N/A
OW
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Recommendation of two regulations that should be candidates for regulatory reform under the President's January 30, 2017, "Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs"
Instructions: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 30, 2017	Apr 14, 2017	N/A
Instruction: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



NATIONAL
RURAL WATER
ASSOCIATION

NRWA America's Largest Utility Membership

2915 S. 13th Street, Duncan, OK 73533
580.252.0629 | nrwa.org

RECEIVED

2017 MAR 29 PM 4:39

OFFICE OF THE
EXECUTIVE SECRETARIAT

March 27, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Pruitt:

On behalf of the National Rural Water Association (NRWA), we wish to congratulate you on your nomination to be Administrator of the United States Environmental Protection Agency (EPA). NRWA is the largest community-based water organization in the country. We are headquartered in Oklahoma and have over 31,000 small and rural community members (various forms of local governments). Our member communities have the very important public responsibility of complying with all applicable regulations and for supplying the public with safe drinking water and sanitation every second of every day.

On January 9, 2017, we wrote an introductory letter to offer our assistance in partnering with you to implement your agenda and to be a "rural resource" on drinking water safety, environmental protection, and quality wastewater service in rural and small town America.¹

We are writing to you today to recommend two U.S. Environmental Protection Agency regulations that should be candidates for regulatory reform under the President's January 30, 2017, "**Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs.**"

First, federally mandated Tier 2 public notices issued under the Safe Drinking Water Act (CFR §141.203 Tier 2 Public Notice) should be eligible for e-reporting or other new and innovative methods for public distribution similar to public notices under EPA's January 3, 2013 policy for "CCR Rule Delivery Options." Adoption of this regulatory reform policy could save small and rural communities millions of dollars in public funding, provide more timely information to the public, and allow for enhanced availability of information to the public by archiving the disclosure material on the internet (as opposed to a one-time mailed notice). EPA's Safe Drinking Water Information System (SDWIS) fiscal year 2016 database lists over 30,000,000 persons in communities with Tier 2-type maximum contaminant level (MCL) or treatment technique (TT) violations with EPA drinking water rules.² A 2015 assessment by the Kansas Rural Water Association found that each Tier 2 public notice costs over \$1 per customer (printing, copying and mailing).³ U.S. Senator Roger Wicker inquired about such regulatory relief to the EPA on June 11, 2015, however, no such relief has been announced by EPA.⁴

Second, we urge you to modify the mandatory health effects information crafted by EPA as part of the mandatory public notices. Our concern is the current EPA information is unnecessarily alarming the public regarding the safety of their drinking water. Many violations of EPA standards are not necessarily an indication of unsafe drinking water (i.e. a temporary exceedance for a small fraction of a part per million that is causing the public to stop drinking their water and not trust their local government).

¹ www.ruralwater.org/Administrator_Pruitt.pdf

² <http://ruralwater.org/tier2.jpg>

³ <http://www.krwa.net/portals/krwa/lifeline/1503/018.pdf>

⁴ <http://www.ruralwater.org/wicker.pdf>

The National Rural Water Association is the country's largest public drinking water and sanitation supply organization with over 31,000 members. Safe drinking water and sanitation are generally recognized as the most essential public health, public welfare, and civic necessities.

For fiscal year 2014, EPA lists 2,135 maximum contaminant level (MCL) violations of DBPs standards: 477 of those exceedances include no recorded level; 110 of the 416 violations for the haloacetic acids standards (HAA5) are for exceedances equal to or less than 5 parts per billion (PPB); and 174 of the total 1,252 violations for total trihalomethanes standards (TTHMs) are for violations equal to or less than 5 PPB. It is our understanding that this category of DBP violations requires Tier 2 Public Notice (direct mailing of the violation to consumers with mandated alarming language specified by EPA) which often results in alarming the public to the point they are afraid to drink the water. For example, after a DBP violation of two thousandths (.002) of a part per million, the local news station in Menominee, Michigan (WFRV, 4/3/2015) reported, *"Residents in Menominee, Michigan are Questioning the Safety of their Drinking Water... Last week, [a consumer] got a notice in the mail saying the Menominee city water system recently violated a drinking water standard. The supply tested high for trihalomethane, a disinfection by-product. 'It was kind of a slap in the face when I got this and I thought, here I'm paying for a commodity and I'm not really sure that it's safe,' explained [the consumer]. 'I don't think I'm the only one in the city that feels that way... I'm actually looking into getting a whole house water filtration system,' she added. 'I don't trust our water anymore...'"*

What the public wants to know most is whether there is a public health significant difference between 80 parts per billion and 82 parts per billion of THMs occurring in their water. Some states have been compelled to issue additional public notices to warn consumers of the significance of EPA mandated warnings (Kentucky Department for Environmental Protection, May 9, 2005).⁵

Thank you for your attention to these two immediate regulatory reform proposals. In the coming days, we will be cataloging the numerous regulatory reform proposals that we have previously submitted to the Agency for your consideration. We appreciate your consideration of these proposals and look forward to working with you on these and many other issues regarding EPA's water programs and regulations.

We urge the EPA to recognize that small and rural communities are a solution, not a problem, to improving public health and protecting the environment. Enhancing drinking water and wastewater quality in small communities is more of a resource issue than a regulatory problem. Most small community non-compliance with the Safe Drinking Water Act and Clean Water Act can be quickly remedied by on-site technical assistance and education. The current EPA regulatory structure is often misapplied to small and rural communities because every community wants to provide safe water and meet all drinking water standards. After all, local water supplies are operated and governed by people whose families drink the water every day and people who are locally elected.

In closing, we look forward to collaborating with you on efforts that improve drinking water safety and environmental protection in rural and small communities. Congratulations again on your nomination to serve the country as the next Administrator of the U.S. Environmental Protection Agency, and we wish you the very best.

Sincerely,



Sam Wade
Chief Executive Officer

cc: Peter Grevatt

⁵ www.ruralwater.org/kydbps.pdf

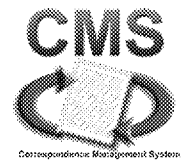
The National Rural Water Association is the country's largest public drinking water and sanitation supply organization with over 31,000 members. Safe drinking water and sanitation are generally recognized as the most essential public health, public welfare, and civic necessities.



Correspondence Management System

Control Number: AX-17-000-6880

Printing Date: March 30, 2017 01:12:32



Citizen Information

Citizen/Originator: Sandler, Jessica

Organization: People for the Ethical Treatment of Animals
Address: 501 Front Street, Norfolk, VA 23510

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-17-000-6880 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 14, 2017 **# of Extensions:** 0
Letter Date: Mar 30, 2017 **Received Date:** Mar 30, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: AA-OCSP-Assistant **Signature Date:** N/A
Administrator - OCSP
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Concern about the interpretation of the amended Toxic Substances Control Act
Instructions: AA-OCSP-Prepare draft response for signature by the Assistant Administrator for OCSP
Instruction Note: N/A
General Notes: N/A
CC: OPA - Office of Public Affairs
ORD - Office of Research and Development -- Immediate Office
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OCSP	Mar 30, 2017	Apr 14, 2017	N/A
Instruction: AA-OCSP-Prepare draft response for signature by the Assistant Administrator for OCSP					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
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March 30, 2017

The Honorable Scott Pruitt
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

VIA USPS and email to: Pruitt.scott@EPA.gov

Dear Administrator Pruitt,

Congratulations on your recent appointment. People for the Ethical Treatment of Animals and our more than five million members and supporters are committed to using innovative, scientifically valid test methods that replace or reduce the use of animals, while providing information that better protects human health and the environment.

In 2016, Congress passed and the president signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act. This act amended the Toxic Substances Control Act (TSCA), received almost unanimous bipartisan support, and directed the Agency to reduce and replace the use of vertebrate animals in chemical testing.

Yet, in its January 17 procedural rule for prioritizing chemicals for risk evaluation under TSCA, the Office of Pollution Prevention and Toxics (OPPT) proposes a screening process that could require chemical manufacturers to conduct extensive toxicity testing – *before it even prioritizes chemicals for risk evaluation*. As noted in numerous public comments submitted, this “pre-prioritization” step, which our legislators never intended, would produce paralyzing uncertainty in the regulated community. Further, the Agency is proposing to initiate an entirely new screening process, rather than more fully adapting its 2014 work plan in which it identified 90 chemicals for further assessment. The Agency’s resources would be more effectively used by prioritizing these already identified substances at a pace consistent with its ability to complete risk evaluations under TSCA.

While we are very concerned with OPPT’s interpretation of the amended TSCA, we enthusiastically support initiatives of the Office of Research and Development, the National Center for Computational Toxicology (NCCT), the Office of Pesticide Programs (OPP), and OPPT that reduce animal use, and it is vital that the Agency allocate funds for their continued support. For example, the Agency’s Toxicity Forecaster (ToxCast) initiative leads the world in developing

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland
554 Grand Ave.
Oakland, CA 94610
510-763-PETA

Info@peta.org
PETA.org

Affiliates:
* PETA Asia
* PETA India
* PETA France
* PETA Australia
* PETA Germany
* PETA Netherlands
* PETA Foundation (U.K.)

automated, high-throughput technologies to screen thousands of chemicals rapidly, reliably, and cost-effectively. NCCT research also includes virtual tissues, advanced computer models capable of simulating how chemicals affect humans. OPP is implementing a process to fulfill its stated commitment to implement 21st century animal-free methods that can assess the toxicity of pesticides in less time, using fewer animals, reducing costs, and better ensuring the protection of human health and the environment.

Thank you for your attention to these matters.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Sandler". The signature is fluid and cursive, with the first letter of the last name being a large, stylized 'S'.

Jessica Sandler, MHS
Vice President for Regulatory Testing
tel: 757-622-7382, ext. 8001
email: JessicaS@peta.org

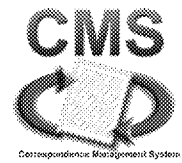
cc: Jeffery Morris, OPPT Director
Rusty Thomas, NCCT Director
Robert Kavlock, Ph.D., ORD Acting Assistant Administrator
Rick Keigwin, Jr., OPP Acting Director



Correspondence Management System

Control Number: AX-17-000-6905

Printing Date: March 30, 2017 03:19:40



Citizen Information

Citizen/Originator: Williams, Emily Mantz

Organization: U.S. Small Business Administration - Office of Advocacy
Address: 409 3rd Street, SW, MC 3114, Washington, DC 20416

Clark, Major D.

Organization: U.S. Small Business Administration - Office of Advocacy
Address: 409 3rd Street, SW, Washington, DC 20416

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6905 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 14, 2017 **# of Extensions:** 0
Letter Date: Mar 30, 2017 **Received Date:** Mar 30, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: DRF - Implementation of Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda"
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OCFO - OCFO -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OSDBU	Mar 30, 2017	Apr 14, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

MEMORANDUM

TO: Heads of Agencies

FROM: *MZC*
Major L. Clark, III Acting Chief Counsel for Advocacy, U.S. Small Business Administration

DATE: March 30, 2017

SUBJECT: Implementation of Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda"

As required by Executive Order (EO) 13272¹, I am writing to advise you of the activities of the Office of Advocacy (Advocacy) related to recent Executive Orders on the reduction of regulatory burdens and offer additional assistance related to these new policies. Advocacy strongly endorses the principles and policies of these Executive Orders and urges that they be implemented consistent with the Regulatory Flexibility Act (RFA)² in order to reduce the regulatory burdens and the disproportionate impacts of regulations on small entities.

Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.³ The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), gives small entities (businesses, organizations, and local governments) a voice in the federal rulemaking process and requires agencies to consider the impacts of their rulemakings on small entities. Under EO 13272, Advocacy provides training to agencies on the RFA.

Over the coming months, Advocacy will be making available additional assistance and tools to implement Executive Orders 13771 and 13777 and engaging in outreach to small entities to identify opportunities to reduce burdens on small entities. Advocacy will also be seeking additional opportunities to train policy officials and regulatory staff on the RFA and its importance in the implementation of these EOs.

¹ Executive Order 13272, signed August 13, 2002 (67 Fed. Reg. 53,461 (August 16, 2002)). Section 2(a) requires the Chief Counsel for Advocacy to "notify agency heads from time to time of the requirements of the [Regulatory Flexibility] Act."

² 5 U.S.C. § 601, *et. seq.*

³ 15 U.S.C. § 634a, *et. seq.*



To initiate Advocacy assistance to your agency in the implementation of EO 13771, EO 13777, and the Regulatory Flexibility Act, please provide me with the names of the officials you have designated as the Regulatory Policy Officer, named under EO 12866, section 6(a)(2), and the Regulatory Reform Officer, named under EO 13777, section 2(a).

This information should be sent to Charles Maresca, Director of Interagency Affairs, SBA Office of Advocacy, Charles.Maresca@sba.gov, as it is available. Please also contact me or Mr. Maresca if you have any questions about this memorandum or your agency's compliance with the RFA.

Thank you for your consideration of these requests. I look forward to a productive effort to reduce the regulatory burdens on small entities.

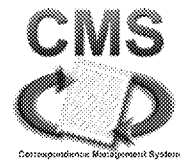
cc: Dominic Mancini, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget



Correspondence Management System

Control Number: AX-17-000-6900

Printing Date: March 30, 2017 03:29:36



Citizen Information

Citizen/Originator: Brimmer, Janette K.

Organization: Earthjustice
Address: 705 Second Avenue, Seattle, WA 98104

Chavez, Jennifer C.

Organization: Earthjustice
Address: 705 Second Avenue, Seattle, WA 98104

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-17-000-6900 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Apr 14, 2017 **# of Extensions:** 0
Letter Date: Mar 24, 2017 **Received Date:** Mar 30, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AA-OW-Assistant Administrator - Signature Date: N/A
OW
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Waters of the United States; Potential Revisions to Clean Water Rule - Scientific and Technical Information to be Included in Administrative Record
Instructions: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 30, 2017	Apr 14, 2017	N/A
Instruction: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW					

Supporting Information

Supporting Author: N/A



RECEIVED

2017 MAR 30 PM 2:19

March 24, 2017

OFFICE OF THE
EXECUTIVE SECRETARIAT

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Office of Water
U.S. Environmental Protection Agency
Michael Shapiro, Acting Asst. Administrator
Mail Code 4101M
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Office of Water
U.S. Environmental Protection Agency
Benita Best-Wong, Acting Principal Deputy
Asst. Administrator
Mail Code 4501T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

**Re: Waters of the United States; Potential Revisions to Clean Water Rule--
Scientific and Technical Information to be Included in Administrative
Record**

Dear Mr. Pruitt, Mr. Shapiro and Ms. Best-Wong:

This letter is submitted on behalf of Earthjustice, Sierra Club, and Puget Soundkeeper Alliance (the "Conservation Organizations"). On February 28, 2017, President Trump signed an Executive Order directing review and potential revision of the Waters of the United States Rule, 80 Fed. Reg. 37,054 (June 29, 2015) (hereafter the "Clean Water Rule"), instructing that such review and any revision must be in keeping with Justice Scalia's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). In news stories that same day and shortly thereafter, Mr. Pruitt vowed to quickly withdraw the Clean Water Rule. Based upon the Executive Order and Mr. Pruitt's statements, the Conservation Organizations assume the directed review and likely withdrawal/revisions to the Clean Water Rule are occurring. This letter is to ensure that a number of scientific, technical, and legal matters are before, and considered by, the U.S. Environmental Protection Agency (the "Agency") and that they are included in the administrative record for the Agency's ultimate decision.

INTRODUCTION

The Federal Water Pollution Control Act (a/k/a the Clean Water Act) is one of our nation's most important and prescient environmental laws. Congress enacted the protections in the Federal Water Pollution Control Act at a time when news reports of horrific pollution incidents highlighted the fact that our waters were in trouble and we could not continue to allow their use as dumping grounds for pollutants without wreaking havoc on entire ecosystems and

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ED_002401_00001724-00016

jeopardizing our drinking water, food sources, commerce and recreation. To that end, Congress' stated purpose and intent was to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Congress did not say that only those waters navigable in fact or with a significant nexus would receive those protections. Rather, it defined "navigable waters" generally as "waters of the U.S." 33 U.S.C. § 1362. The Legislative History of the 1972 Federal Water Pollution Control Act further demonstrates that Congress intended broad application of the law and its jurisdictional reach in order to foster the critical protective and remedial purposes of the law. Statements from both House Members and Senators in policy and conference committees made clear that the term "navigable" as used in the Act was not intended to constrain the reach and jurisdiction of the Act to protect against and clean up pollution in all our nation's waters. Members pointedly stated that they were concerned that inclusion of the word "navigable" *not* be read as limiting the Act's application in any way. Rather, their stated intent was for the Federal Water Pollution Control Act to have as broad an application as possible to protect all waters of the U.S. Members noted that the intent was to move away from the constrained notions of jurisdiction, and, in particular, notions regarding navigation, in order to ensure that waters are protected in a full and comprehensive way. *See A Legislative History of the Water Pollution Control Amendments of 1972* (Cong. Res. Serv.), at 178-79, 250-51, 327, 818, 1495.

Further, the Act is plainly a water pollution act, not a law about navigation (in any sense). The Army Corps of Engineers ("COE"), early in the life of the Federal Water Pollution Control Act, made an unsuccessful effort to impose strict navigation constraints on its obligations by construing its jurisdiction very narrowly under the new laws to match its jurisdiction under navigational laws such as the Rivers and Harbors Act of 1899. In *Natural Resources Def. Council v. Callaway*, 392 F. Supp. 685 (D.D.C. 1975), the court soundly rejected the COE's attempt finding that the Federal Water Pollution Control Act dictated a wider sweep in order to address pollutants to the nation's waters.

As EPA research and reporting repeatedly shows year after year, we still have a long way to go in applying the Clean Water Act and meeting its directives and, therefore, attempts to constrain application of the Clean Water Act will be extremely damaging to our nation's waters. Toxics are still discharged into our waters while agricultural discharges are almost wholly unregulated, account for almost half of the pollution entering waterways, and account for a very significant portion of the waters that are currently failing to meet basic standards of cleanliness (including the hypoxia problem in the Gulf and toxic algae blooms in lakes throughout the Midwest). *See, e.g., EPA, Nat'l Rivers and Streams Assessment* (Feb. 2013) where EPA reports that for its 2008-09 study well over 50% of the waters assessed exhibited *poor* conditions and only 20% were classified as "good." The results by region were even more disappointing with 62% of the waters in the east classified as poor and 58% in the plains states. (Copy enclosed.)

EPA's summary of states' reported water quality data paints a similarly dismal and apparently worsening picture. States' reported data on EPA's website at https://ofmpub.epa.gov/waters10/attains_index.control#total_assessed_waters, (last visited March 22, 2017) show that states have an extremely poor record of assessing the quality of their

waters with rarely more than one-half of waters assessed and often a small fraction, despite this being an obligation for the last forty years. And, of the waters that states have assessed, 55% of rivers and streams, 71.7% of lakes, and 50% of bays/estuaries are *failing* to meet one or more water quality standards. (These numbers have worsened over the last several years—in 2014 states' reported data had 53% of rivers and streams and 68% of lakes failing to meet standards.) Some regions' numbers are even worse. For example, the Region 6 states (which include Texas and Oklahoma) have assessed only slightly more than 11% of their rivers and streams and of those they report that 60% of them fail to meet basic water quality standards. For lakes in Region 6, 51% have been assessed and over 65% of them are too dirty to meet standards. Data in Region 3 (which includes states such as West Virginia and Pennsylvania) show 37% of lakes have been assessed and 83% of them fail to meet standards. Region 9 (which includes California and Arizona) report that only 24% of rivers and streams have been assessed with 87% of them failing to meet standards, 39% of lakes have been assessed with 87% failing, and 5% of estuaries and bays have been assessed with 98% of those failing to meet basic standards of quality.

Discharges of pollutants into our nation's water have not been eliminated and in many respects are not even controlled. Lake Erie, once a ray of hope for positive change under the Act, has descended once again into a cesspool of algae blooms and dead fish due to unabated and increasing nutrient runoff from farms and development. *See* reporting regarding City of Toledo's closure of water supply due to toxic algal blooms and extent of toxic bloom for 2014, "Behind Toledo's Water Crisis, a Long-Troubled Lake Erie," NEW YORK TIMES, August 4, 2014; "Lake Erie's Algae Explosion Blamed on Farmers," CBC News, August 7, 2014. The City of Des Moines, Iowa has tried, unsuccessfully, to address the skyrocketing expense of removing nitrates from the city's drinking water that is coming from upstream pollution sources. <http://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/03/22/lawsuits-real-losers-iowans-suffering-dirty-water/99501730/> (DES MOINES REGISTER, March 22, 2017).

The news is not better for wetlands, which are critical to groundwater recharge, controlling flooding, cleansing waters, and providing important habitat. Development and agriculture continue to decimate wetlands. In the latest comprehensive reports, agencies reported that we had lost over 50% of our wetlands nationwide; but in parts of the Midwest and coastal areas the figure is as high as 90% or more with attendant disastrous results for clean water. *See*, e.g., EPA Wetland Status & Trends, water.epa.gov/type/wetlands/vital_status.cfm and (copy enclosed); Dahl, T.E., *Status & Trends of Wetlands in the Conterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior, at 16 and 89-90 (2011) (copy enclosed). While the USFWS reports the *rate* of wetland loss has slowed, losses still outdistance gains as recently as 2009, the last year USFWS reported. *Id.* This holds true in USFWS' status and trends report for coastal wetland as well, where it is reported that the nation continues to suffer a net loss of coastal wetlands (copy enclosed). And even when wetland acres are not lost, they are often degraded, losing functions and values as wildlife habitat, natural flood control and natural water quality control. Development also continues to contribute to stormwater runoff and hugely-altered hydrographs and erosion by eliminating wetlands and natural riparian areas and covering the landscape with impervious surfaces, pouring toxic chemicals and fertilizer into natural

streams and triggering extreme erosion.¹ Plainly, the protections of the Federal Water Pollution Control Act are still needed on a broad scale as we are very far from reaching its goals and directives. The greatest and most sustainable Clean Water Act success stories are directly attributable to strict application of the Act's controls.

DOCUMENTS TO BE PLACED IN THE RECORD UNDERLYING THE AGENCY'S
REVIEW AND ANY REVISION OR WITHDRAWAL OF THE CLEAN WATER RULE

As the Agency proceeds with its work under the direction of the Executive Order, it is critical that the Agency consider the wealth of information outlined above and already developed by the Agency and the COE in the years of study and in the development of the Clean Water Rule. In the work to develop the Clean Water Rule, the Agency and COE consulted with the nation's top scientists on topics such as hydrology, geology, stream morphology, wetlands, and aquatic biology. The Agency's and CEO's consultation with the scientists helped to ensure the broadest and best protections for waters of the U.S. in keeping with the Supreme Court's and many Circuit Court's direction to include waters in "significant nexus" with larger downstream rivers. This makes both scientific and legal sense in that waters are not static on the landscape, and to protect the waters of the U.S. requires an understanding and protection of all waters in connection with larger waters—chemically, physically, and biologically – as directed by Congress in the Act itself. The Conservation Organizations therefore refer you to, at a minimum, the documents referenced herein and below, and call upon you to ensure that they are part of the record of your actions under the Executive Order and any action taken to review, reconsider, withdraw, affirm, amend, or replace the Clean Water Rule. We enclose a copy of each of these documents with this letter for inclusion in the administrative record:²

- A. EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013);
- B. EPA, *Nat'l Rivers and Streams Assessment Technical Report* (Mar. 2016);
- C. EPA, *Nat'l Rivers and Streams Assessment Fact Sheet*;
- D. EPA, *National Wetland Condition Assessment* (2011);
- E. Dahl T.E., *Status & Trends of Wetlands in the Conterminous United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2011);

¹ It must also be noted that the proposed budget blueprint attacks funding for voluntary cleanup measures across the country, meaning that only through Clean Water Act regulation will improvements be made.

² The Conservation Organizations also assume that citations to the Agency's own databases and information reported by the states regarding status of waters, cited above, is part of the record for the actions described related to the Clean Water Rule.

- F. Dahl T.E., *Status & Trends of Wetlands in the Coastal Watersheds of the Coterminus United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2013);
- G. EPA and COE, *Connectivity Report, preliminary for external review*, (2014);
- H. EPA and COE, *Connectivity Report (final)* (Jan. 2015);
- I. *Preliminary comments from individual members of the SAB Panel on Connectivity Report* (Aug. 2014);
- J. *Letter from SAB to EPA on Connectivity Panel Activity and Report* (Sept. 2014);
and
- K. EPA, *Technical Support Document in Support of Clean Water Rule* (May 2015).

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,



Janette K. Brimmer

Jennifer Chavez

Earthjustice

And on behalf of Sierra Club and Puget Soundkeeper Alliance

Enclosures

cc: Aaron Isherwood, Sierra Club (w/o encls.)
Chris Wilke, Puget Soundkeeper Alliance (w/o encls.)

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 4/20/2017 3:34:36 PM
To: Witt, Richard [Witt.Richard@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]

Subject:
Attachments:

Attorney Client / Ex. 5

I am not sure all letters were attached so here are the letter (I may be wrong, but want David to have everything). Letters 1 and 2 were in 2011; then there was a letter in 2014.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-5487

From: Witt, Richard
Sent: Thursday, April 20, 2017 11:28 AM
To: Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: **Attorney Client / Ex. 5**

Richard Witt
OGC Water Law Office
564-5496

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 4/25/2017 8:15:01 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject:
Attachments: **Deliberative Process / Ex. 5**

<!--[if lte mso 15 || CheckWebRef]-->

Neugeboren, Steven has shared a OneDrive for Business file with you. To view it, click the link below.

Deliberative Process / Ex. 5

<!--[endif]-->

Thanks Sarah and Justin – Just got off the phone with my team and the wetlands division and Mindy is going to reply to you regarding next steps in incorporating/addressing your comments.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Greenwalt, Sarah
Sent: Tuesday, April 25, 2017 1:47 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: **Deliberative Process / Ex. 5**

Steve - Attached is a redline of the preamble. A few other thoughts:

Attorney-Client / Deliberative / Ex. 5

Attorney-Client / Deliberative / Ex. 5

Let me know if you have any other questions for me.

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | Cell: **Personal Phone / Ex. 6**

Greenwalt.Sarah@epa.gov

Message

From: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Sent: 3/20/2017 10:16:36 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: Draft FR notices for Energy EO

Good deal

Sent from my iPhone

On Mar 20, 2017, at 6:13 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Stopped by - let's talk tomorrow - all is well

Sent from my iPhone

On Mar 20, 2017, at 5:32 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

That should work. I'm trying to get out of here soon, so if I'm not in my office we can chat tomorrow. Nothing urgent, just wanted to make sure all was well.

From: Schwab, Justin
Sent: Monday, March 20, 2017 5:31 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: Draft FR notices for Energy EO

Yeah in Samantha's office at the moment
Will stop by after I leave here if that works

Sent from my iPhone

On Mar 20, 2017, at 3:08 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

If you've already discussed with her I don't think I need to. Could you just let me know when you're free and you can catch me up on that conversation?

PS I moved a few doors down across from where you were pre-OGC

From: Schwab, Justin
Sent: Monday, March 20, 2017 3:07 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: Draft FR notices for Energy EO

Yes (have discussed with her) and no (will be on call with DOJ). I can tell her to expect that you will be in touch with her soon (or we can both talk to her after 4:30 or 5 if you prefer)

Sent from my iPhone

On Mar 20, 2017, at 3:04 PM, Greenwalt, Sarah
<greenwalt.sarah@epa.gov> wrote:

Have you talked to Lorie today? Are you free to discuss
around 4:15 or so? I want to make sure we are on the
same page.

From: Schmidt, Lorie
Sent: Friday, March 17, 2017 7:00 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Greenwalt, Sarah <greenwalt.sarah@epa.gov>;
Schwab, Justin <schwab.justin@epa.gov>; Minoli, Kevin
<Minoli.Kevin@epa.gov>; Dunham, Sarah
<Dunham.Sarah@epa.gov>; Zenick, Elliott
<Zenick.Elliott@epa.gov>; Brown, Byron
<brown.byron@epa.gov>
Subject: Draft FR notices for Energy EO

Ryan

Attorney-Client / Deliberative / Ex. 5

Please let me know if you need anything else on these
or have any questions. I will be checking email
periodically over the week-end.

Lorie

Lorie Schmidt
Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
US Environmental Protection Agency
(202)564-1681 (office)

Personal Phone / Ex. 6

 (mobile)

<FR Notice.oilandgas 3-17 7 pm.docx>

<FR Notice.CPP 3-17 6 pm.docx>

<FR Notice.CPS 3-17 7 pm.docx>

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/28/2017 5:01:53 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: Re: RIA CPP

Got it.

Sent from my iPhone

On Apr 28, 2017, at 12:42 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Sorry I mis-read this.

Attorney Client / Ex. 5

Attorney Client / Ex. 5 Justin, Mandy?

From: McGartland, Al
Sent: Friday, April 28, 2017 12:37 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RIA CPP

Deliberative Process / Ex. 5

Message

From: Damico, Brian [Damico.Brian@epa.gov]
Sent: 4/27/2017 5:16:25 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Shapiro, Mike [Shapiro.Mike@epa.gov]; Peck, Gregory [Peck.Gregory@epa.gov]; Loop, Travis [Loop.Travis@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Frithsen, Jeff [Frithsen.Jeff@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Hewitt, Julie [Hewitt.Julie@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Stokely, Peter [Stokely.Peter@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Donald.e.jackson@usace.army.mil; Brown, Byron [brown.byron@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]
CC: FertikEdgerton, Rachel [FertikEdgerton.Rachel@epa.gov]; Borum, Denis [Borum.Denis@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Washington, Valerie [Washington.Valerie@epa.gov]; Howard, MarkW [Howard.MarkW@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Lousberg, Macara [Lousberg.Macara@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]; Cindy Barger [cindy.s.barger.civ@mail.mil]; McGartland, Al [McGartland.Al@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Clark, Becki [Clark.Beki@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Hanson, Andrew [Hanson.Andrew@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Swackhammer, J-Troy [Swackhammer.J-Troy@epa.gov]; Connors, Sandra [Connors.Sandra@epa.gov]; Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]

Subject:

Attorney Client / Ex. 5

Got it

Brian D'Amico
Associate Chief, Prevention Branch
Drinking Water Protection Division
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
Washington, DC
(202) 566-1069 (Office)
(202) 384-2190 (EPA Cell)

From: Neugeboren, Steven
Sent: Thursday, April 27, 2017 1:16 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>;

Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>

Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW <Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al <McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki <Clark.Beki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>

Subject: **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

I had sent the urgent message below this morning but hearing that no one received it, so am resending.

Could ONE person please reply to all to confirm receipt?

Thanks.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Neugeboren, Steven

Sent: Thursday, April 27, 2017 11:27 AM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Kevin Minoli <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>

Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW <Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al

<McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki <Clark.Beki@epa.gov>;
Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Principe, Vanessa
<Principe.Vanessa@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Connors, Sandra
<Connors.Sandra@epa.gov>; Lorie Schmidt <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-
Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>

Subject: **Attorney Client / Ex. 5**

Importance: High

I am sending this to all the EPA folks that are invitees to the Wednesday morning WOTUS meetings.

Attorney Client/DP Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency

Message

From: Hupp, Sydney [hupp.sydney@epa.gov]
Sent: 4/24/2017 9:35:13 PM
To: Bennett, Tate [Bennett.Tate@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Ford, Hayley [ford.hayley@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Konkus, John [konkus.john@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Perrotta, Pasquale [Perrotta.Pasquale@epa.gov]; Ringel, Aaron [ringel.aaron@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Willis, Sharnett [Willis.Sharnett@epa.gov]; Woodward, Cheryl [Woodward.Cheryl@epa.gov]
Subject: April 25th-May 1st, 2017 | Daily Line x Line
Attachments: April 25th- May 1st, 2017 Line X Line.docx

Good afternoon! Please send briefing materials for tomorrow's meetings before our 8:45AM COS meeting in the AM. Additionally please send materials for Wednesday's meetings by 2PM tomorrow.

Thank you!

Sydney Hupp
Executive Scheduler
Office of the Adminsitrator

Personal Phone / Ex. 6 (C)

Message

From: Packard, Elise [Packard.Elise@epa.gov]
Sent: 3/23/2017 12:49:59 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!

No worries!

Sent from my iPhone
Elise Packard
202 564 7729

On Mar 23, 2017, at 8:46 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Elise - see below - I have not been able to reach Kevin - he doesn't yet know that I won't be able to be at breakfast - please tell him that I will be offsite for the reason I mentioned and please tell everyone more generally that I will be offsite with the administrator but that I am with you all in spirit and look forward to meeting those I haven't and continuing to work with those I have

Sent from my iPhone

Begin forwarded message:

From: "Schwab, Justin" <schwab.justin@epa.gov>
Date: March 23, 2017 at 5:59:46 AM EDT
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: Re: Please join us in welcoming Justin Schwab as our new Deputy General Counsel -- Please stop by the Front Office breakfast and say hello!

Kevin - unfortunately I will not be able to be at that breakfast - I apologize profusely for this - I replied "maybe" to that invitation (did not realize that I was supposed to be the featured guest at it!) - I realize now I should have replied "decline" instead - I will be offsite then for a meeting which I told Elise about yesterday evening - I thought she would tell you and I did not want to bother you with another phone call because I knew how stressed you were yesterday.

****Please call when you get this and I will explain in more detail why I cannot be there.**** I will try to call around 8:15 in any event. You all should of course still get together anyway and please convey my apologies. To those I have already met, please let them know I have enjoyed working with them so far and look forward to more of it. To those I have not yet met, please let them know that I look forward to meeting as many of them as possible as soon as possible.

Sent from my iPhone

On Mar 22, 2017, at 11:19 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Hi Everyone-

It is my pleasure to officially welcome Justin Schwab to OGC as a new Deputy General Counsel. Some of you have already met and worked with Justin as he was the legal POC for the transition team.

Justin comes to us from Baker & Hostetler, where for the past four years he specialized in the Clean Air Act and researched and drafted briefs (including to the Supreme Court) on various environmental issues. Prior to that he clerked for two Judges, the Hon. Richard Wesley, United States Court of Appeals for the Second Circuit, and the Hon. Christine Durham, Utah Supreme Court. He is a graduate of Yale Law School, where he was Editor-in-Chief of the Yale Journal of Law & the Humanities, as well as serving as an editor on the Yale Journal on Regulation. We are looking forward to seeing his gimlet eye cast over OGC's written opinions! Justin also has a PhD in Classics from the University of California at Berkeley. So all our Cicero scholars, here's your chance to reinvigorate those rusty skills!

Justin is sitting in 4020 and I encourage you all to come get to know him. We are delighted that he has joined the OGC team, please come to a breakfast in the Front Office Thursday morning (that's today) and welcome and/or meet him!

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 4/4/2017 6:13:52 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Subject: **Attorney Client / Ex. 5**

Let's do this. I will come up at 2:30 and communicate to who is available then, and then follow up with those who are not able to meet then.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

> On Apr 4, 2017, at 2:12 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>
> Kevin, if you want to communicate the upshot to me by other means later (at 5:15 or some other time) I don't necessarily need to be there at 2:30 if you want to meet with Steve et al then
>
> Sent from my iPhone
>
>> On Apr 4, 2017, at 2:11 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:
>>
>> I've checked with all of my folks and 230 is preferred.
>>
>> Steven Neugeboren
>> Associate General Counsel
>> Water Law Office
>> Environmental Protection Agency
>> 202-564-5488
>>
>> -----Original Message-----
>> From: Fotouhi, David
>> Sent: Tuesday, April 04, 2017 1:57 PM
>> To: Schwab, Justin <schwab.justin@epa.gov>
>> Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
>> Subject: **Attorney Client / Ex. 5**
>>
>> I can't do 2:30, but 5:15 works.
>>
>> Sent from my iPhone
>>
>>> On Apr 4, 2017, at 1:56 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>>>
>>> I can do 5:15
>>>
>>> Sent from my iPhone
>>>
>>> On Apr 4, 2017, at 1:55 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>>>>
>>>> All- **Attorney Client / Ex. 5**

Attorney Client / Ex. 5 Unfortunately, I'm in the EMC meeting. In theory I have a break at 2:30, although we are running 15-30 minutes behind at any given moment. We are slated to end at 5:00. If folks can meet at 2:30 I will step out then for 15 minutes, if not, let's meet at 5:15. Let me know what works. Thanks, Kevin
>>>>
>>>> Kevin S. Minoli
>>>> Acting General Counsel
>>>> Office of General Counsel
>>>> US Environmental Protection Agency
>>>> Main Office Line: 202-564-8040

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 4/21/2017 7:45:37 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]

Subject:

Attachments:

Attorney Client / Ex. 5

Flag: Flag for follow up

For Front Office Support - can you please get this in Kevin's weekend notebook?

Kevin/Justin/David – this cleans up a bit the version that Simma sent you after our meeting.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

Appointment

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 4/19/2017 1:28:23 PM
To: Michael.J.Catanzaro@who.eop.gov; Anthony.P.Campau@omb.eop.gov; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; McGartland, Al [McGartland.Al@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]
CC: Inge, Carolyn [Inge.Carolyn@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]; Irving, Verna [Irving.Verna@epa.gov]
Subject: WOTUS and CPP Call **Personal Phone / Ex. 6**
Location: DCRoomARN3500/OPEI
Start: 4/19/2017 3:00:00 PM
End: 4/19/2017 3:30:00 PM
Show Time As: Tentative

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 4/3/2017 4:36:18 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]
Subject: RE: Reporter seeking comment on SCOTUS not halting Clean Water Rule litigation

Okay. David can you help?

From: Schwab, Justin
Sent: Monday, April 3, 2017 12:36 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: Reporter seeking comment on SCOTUS not halting Clean Water Rule litigation

I am recused from WOTUS litigation FYI

Sent from my iPhone

On Apr 3, 2017, at 11:59 AM, Konkus, John <konkus.john@epa.gov> wrote:

Justin and David: Thoughts?

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: Keith Goldberg <keith.goldberg@law360.com>
Date: April 3, 2017 at 11:57:48 AM EDT
To: Press <Press@epa.gov>
Subject: Reporter seeking comment on SCOTUS not halting Clean Water Rule litigation

I'm working on a deadline story on the Supreme Court today refusing to put the litigation over the Clean Water Rule on hold and wanted to see if anyone from the agency wanted to comment. If you could get back to me ASAP, I'd appreciate it.

--

Best,

Keith Goldberg
Senior Reporter, Energy



Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
Phone: (646) 783-7187

Mobile: (646) 450-3346

E-mail: keith.goldberg@law360.com



[@kdgscribe](https://twitter.com/kdgscribe)



[@Energy Law360](https://twitter.com/EnergyLaw360)

Message

From: Albores, Richard [Albores.Richard@epa.gov]
Sent: 4/19/2017 12:59:46 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
CC: Jones, Gail-R [Jones.Gail-R@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Subject: Fwd: 4/19/17 ARLO Hot Issues Agenda
Attachments: April 19 17 Hot Issues.docx; ATT00001.htm; Attorney Client / DPP / Ex. 5 litigation hold.docx; ATT00002.htm

FYI.

R

Sent from my iPhone

Begin forwarded message:

From: "Graham, Cheryl" <Graham.Cheryl@epa.gov>
Date: April 19, 2017 at 6:18:20 AM EDT
To: OGC Immediate Office All <OGC_Immediate_Office_All@epa.gov>
Cc: "Jones, Gail-R" <Jones.Gail-R@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Subject: 4/19/17 ARLO Hot Issues Agenda

Cheryl R. Graham
Cheryl R. Graham
OGC/ARLO
(202) 564-5173

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 4/24/2017 8:39:20 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]

Subject:
Attachments: **Attorney Client / Ex. 5**

Flag: Flag for follow up

Sarah – As discussed, here is a revised version reflecting your input.

Attorney Client / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

Message

From: Dravis, Samantha [dravis.samantha@epa.gov]
Sent: 3/14/2017 4:33:59 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Re: tomorrow's WOTUS meeting

Sarah and I will attend. D Schnare probably should not lead discussion

Sent from my iPhone

On Mar 14, 2017, at 12:15 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Tomorrow is the third instance of a weekly meeting to discuss the revision of the WOTUS rule in light of the recent Executive Order and our Federal Register notice following on its heels.

Sarah asked for this info and suggested that Samantha may want to attend as well.

The invite comes from Mike Shapiro (acting Assistant Administrator of the Office of Water). The meetings have featured personnel from OW, Water Law Office, and OECA's civil enforcement division. David Schnare has primarily driven discussion in the meetings I have been to.

I will not be able to make it tomorrow, because of a meeting at DOJ to discuss Colorado's position in New Mexico's original-jurisdiction suit against it in the Supreme Court (in re: Gold King). (Kevin Minoli will also be at the DOJ meeting and so will not be at this WOTUS meeting as well.)

It will be held from 10 to 10:45, in 3233 WJCE.

Call in is 1-866-299-3188, passcode 2025640516.

NB: This is in the EAST building, NOT the North/South complex where we all have our offices.

Getting to East is tricky if you've never done it before. The best way is to go up to the seventh floor, cross through the central corridor onto the South side, then turn left and walk east down the curved hallway. At some point you will see that the floor changes from the familiar white of the North/South building to red brick. The red brick part is the East building. Once there, take the elevator down to the third floor, then find 3233 East.

I realize that's complicated, so please let me know if you would like me to take you there this afternoon so that you know where to go tomorrow.

Best,

Justin

Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 4/19/2017 12:56:09 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: WOTUS and CPP Follow-up today

Thanks! They want to do it before 1:00 today - schedules aren't meshing (imagine that). Samantha is connecting with Anthony now.

-----Original Message-----

From: Fotouhi, David
Sent: Wednesday, April 19, 2017 8:54 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: WOTUS and CPP Follow-up today

I could do between now and 10:00 a.m., 3:30-4:00 p.m., or after 4:30 p.m. Thanks!

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Message-----

From: Schwab, Justin
Sent: Wednesday, April 19, 2017 8:51 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re: WOTUS and CPP Follow-up today

Free before 10, 11-1, 3-4, 4:30-5:30, after 6

Sent from my iPhone

> On Apr 19, 2017, at 8:28 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

>

> Unfortunately, I'm not free until 11.

>

>

> -----Original Message-----

> From: Kime, Robin

> Sent: Wednesday, April 19, 2017 8:28 AM

> To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>

> Cc: Dravis, Samantha <dravis.samantha@epa.gov>

> Subject: WOTUS and CPP Follow-up today

>

> Good morning,

> Hope you are well. Do you think 9:30 could work for this call?

>

>

>>

>> -----Original Message-----

>> From: Campau, Anthony P. EOP/OMB [mailto:Anthony.P.Campau@omb.eop.gov]

>> Sent: Wednesday, April 19, 2017 6:24 AM

>> To: Dravis, Samantha <dravis.samantha@epa.gov>

>> Cc: Catanzaro, Michael J. EOP/WHO <Michael.J.Catanzaro@who.eop.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Inge, Carolyn <Inge.Carolyn@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Irving, Verna <Irving.Verna@epa.gov>

>> Subject: Re: WOTUS and CPP Call -

Conference Line/Code / Ex. 6

>>

>> Let us know if there's a window to discuss follow up on a couple of the questions from yesterday. We're thinking sometime before 1:00 p.m. today if possible.

>>
>> Thanks, team.
>>
>> Sent from my iPhone
>>
>>> On Apr 18, 2017, at 2:34 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>>
>>> Hi
>>>
>>> Will you please add this from Samantha's calendar and open the phone line from the conference room?
Thanks
>>>
>>>
>>> Topic: WOTUS and CPP Call - **Conference Line/Code / Ex. 6**
>>> Date: Today
>>> Time: 3:30 - 4:15 p.m.
>>> Location: 3500 WJCN
>>> Required: Michael.J.Catanzaro@who.eop.gov<mailto:Michael.J.Catanzaro@who.eop.gov>;
Anthony.P.Campau@omb.eop.gov<mailto:Anthony.P.Campau@omb.eop.gov>; Bolen, Brittany
bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>; Schwab, Justin
<schwab.justin@epa.gov<mailto:schwab.justin@epa.gov>>; McGartland, Al
<McGartland.Al@epa.gov<mailto:McGartland.Al@epa.gov>>; Greenwalt, Sarah
<greenwalt.sarah@epa.gov<mailto:greenwalt.sarah@epa.gov>>; Fotouhi, David
<fotouhi.david@epa.gov<mailto:fotouhi.david@epa.gov>>; Nickerson, William
<Nickerson.William@epa.gov<mailto:Nickerson.William@epa.gov>>
>>> CC: Kime, Robin <Kime.Robin@epa.gov<mailto:Kime.Robin@epa.gov>>; Inge, Carolyn
<Inge.Carolyn@epa.gov<mailto:Inge.Carolyn@epa.gov>>; Irving, Verna
<Irving.Verna@epa.gov<mailto:Irving.Verna@epa.gov>>
>>>
>>>
>>>
>>> <meeting.ics>

Message

From: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Sent: 3/14/2017 4:02:34 PM
To: Cozad, David [Cozad.David@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Shinkman, Susan [Shinkman.Susan@epa.gov]
Subject: RE: Clean Water Rule

David, thank you for your quick response. Please be advised that I am happy to participate in any and all policy discussions related to WOTUS, I am conflicted out of any discussion related to the WOTUS litigation between the States and EPA. So, to the extent any communication discusses that specifically, I do not need to see it.

Thanks!
-SG

From: Cozad, David
Sent: Tuesday, March 14, 2017 11:56 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Shinkman, Susan <Shinkman.Susan@epa.gov>
Subject: FW: Clean Water Rule

Hi,

Attorney Client / Ex. 5

FYI, I will forward you under separate cover another relevant email

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Thanks

Dave

From: Shinkman, Susan

Sent: Monday, March 13, 2017 4:17 PM

To: Cozad, David <Cozad.David@epa.gov>

Cc: Pollins, Mark <Pollins.Mark@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

Subject: FW: Clean Water Rule

Dave,

Below is the email I sent out to all enforcement staff, On October 15, 2015, after the Rule was stayed.

I will follow this email with a copy of the email from Cynthia, attaching a memo from me dated October 1, 2015, giving instructions for enforcement of the Rule, prior to the nation-wide stay.

Susan

From: Shinkman, Susan

Sent: Thursday, October 15, 2015 6:03 AM

To: Regional Counsel Contacts <Regional_Counsel_Contacts@epa.gov>; Enforcement Division Directors <Enforcement_Division_Directors@epa.gov>; OECA-OCE-WED <OECAOCEWED@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Washington, Debra <Washington.Debra@epa.gov>; Ellis, Krystle <Ellis.Krystle@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Bunnell, Julia <Bunnell.Julia@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Kenney, James <Kenney.James@epa.gov>; Kabler, Lauren <Kabler.Lauren@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Lott, Don <Lott.Don@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; McCray, Deborah <Mccray.Deborah@epa.gov>; Miles, James <miles.james@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Stedeford, Todd <Stedeford.Todd@epa.gov>; Stewart, Andrew <Stewart.Andrew@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>

Cc: Giles-AA, Cynthia <Giles-AA.Cynthia@epa.gov>; Wilson, Shari <Wilson.Shari@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Subject: Clean Water Rule

On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide pending further action of the court. In light of this nationwide stay,

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5 Should you have any questions please contact me or your staff may contact Melissa Katz at (303) 312-6842, or Andrew Cherry at (202) 564-2589.

Thanks,
Susan

Susan Shinkman
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency
Washington, DC
202-564-3257

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.

Message

From: Cozad, David [Cozad.David@epa.gov]
Sent: 3/14/2017 3:57:58 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Shinkman, Susan [Shinkman.Susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: FW: Clean Water Rule administrative enforcement coordination
Attachments: **Attorney Client / DPP / Ex. 5** Clean Water Act Administrative Enforcement Actions.pdf

Attorney Client / Ex. 5

From: Shinkman, Susan
Sent: Monday, March 13, 2017 4:18 PM
To: Cozad, David <Cozad.David@epa.gov>
Cc: Pollins, Mark <Pollins.Mark@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: FW: Clean Water Rule administrative enforcement coordination

Attorney Client / Ex. 5

From: Giles-AA, Cynthia
Sent: Friday, October 02, 2015 12:18 PM
To: Regional Administrators <Regional Administrators@epa.gov>; DRA <DRA@epa.gov>
Cc: Enforcement Division Directors <Enforcement Division Directors@epa.gov>; Regional Counsel Contacts <Regional Counsel Contacts@epa.gov>; Enforcement Coordinators <Enforcement Coordinators@epa.gov>; Murphy, Stacy <Murphy.Stacy@epa.gov>; Nann, Barbara <nann.barbara@epa.gov>; Wilson, Shari <Wilson.Shari@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Katz, Melissa <Katz.Melissa@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Shinkman, Susan <Shinkman.Susan@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Fishburn, Meredith <Fishburn.Meredith@epa.gov>
Subject: Clean Water Rule administrative enforcement coordination

Colleagues,

I am writing to alert you to the attached memo regarding Headquarters and Regional coordination on Clean Water Act administrative enforcement actions. The purpose of the memo is to **Attorney Client / DPP / Ex. 5**

Attorney Client / DPP / Ex. 5

On June 29, the Environmental Protection Agency and the Department of the Army issued the Clean Water Rule, which became effective on August 28. However, on August 27, the District Court for North Dakota issued a preliminary injunction enjoining the Clean Water Rule in the following states: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming. In these states, the old regulatory definition of "waters of the United States" will continue to apply.

In all other states and jurisdictions under Clean Water Act (CWA) jurisdiction the Clean Water Rule applies as of August 28. **Attorney Client / DPP / Ex. 5**

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Attorney Client / DPP / Ex. 5

Thank you in advance for your cooperation, should you have any questions please have your staff contact Melissa Katz at (303) 312-6842 or Andrew Cherry at (202) 564-2589, and Meredith Fishburn at (202) 564-4790 for CWA Section 311(c) and (e) matters.

Cynthia

Message

From: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Sent: 3/20/2017 9:29:47 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: Draft FR notices for Energy EO

Hey there, are you still around?

From: Schwab, Justin
Sent: Monday, March 20, 2017 3:10 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: Draft FR notices for Energy EO

Will do.

Sent from my iPhone

On Mar 20, 2017, at 3:08 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

If you've already discussed with her I don't think I need to. Could you just let me know when you're free and you can catch me up on that conversation?

PS I moved a few doors down across from where you were pre-OGC

From: Schwab, Justin
Sent: Monday, March 20, 2017 3:07 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: Re: Draft FR notices for Energy EO

Yes (have discussed with her) and no (will be on call with DOJ). I can tell her to expect that you will be in touch with her soon (or we can both talk to her after 4:30 or 5 if you prefer)

Sent from my iPhone

On Mar 20, 2017, at 3:04 PM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

Have you talked to Lorie today? Are you free to discuss around 4:15 or so? I want to make sure we are on the same page.

From: Schmidt, Lorie
Sent: Friday, March 17, 2017 7:00 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Draft FR notices for Energy EO

Ryan

Attorney Client / Deliberative Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
US Environmental Protection Agency
(202)564-1681 (office)
Personal Phone / Ex. 6 mobile)

<FR Notice.oilandgas 3-17 7 pm.docx>

<FR Notice.CPP 3-17 6 pm.docx>

<FR Notice.CPS 3-17 7 pm.docx>

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/3/2017 3:22:48 PM
To: Konkus, John [konkus.john@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: Website work this weekend
Attachments: KY Bevin.pdf

John:

As discussed, please see suggested revisions below in red, bold text. A few notes about our proposed changes:

Deliberative Process/AC Ex. 5

Let us know if you have any questions or would like to discuss further.

Best,

David

Deliberative Process/AC Ex. 5

Deliberative Process/AC Ex. 5

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Konkus, John
Sent: Monday, April 3, 2017 10:33 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: FW: Website work this weekend

Justin and/or David: Can we jump on the phone this morning sometime to discuss? My extension is 564-2187.

From: Hart, Daniel
Sent: Monday, April 3, 2017 8:54 AM
To: Konkus, John <konkus.john@epa.gov>; Hull, George <Hull.George@epa.gov>
Cc: Orquina, Jessica <Orquina.Jessica@epa.gov>; Milbourn, Cathy <Milbourn.Cathy@epa.gov>
Subject: RE: Website work this weekend

Log in with your LAN ID and password to see the mockup here:
<https://wcms.epa.gov/node/174053/revisions/513155/view>

Below is a screenshot. As I mentioned to George, this is sitting in the **newsroom** area and should probably be moved into an **area owned by OAR**. This page was what I was thinking when we were first talking about updating the CPP homepage to link to an **'info' page**.

Deliberative Process / Ex. 5

Daniel (Danny) Hart | Director, Office of Web Communication, Office of Public Affairs, U.S. EPA | desk: 202-564-7577 |
cell: Personal Phone / Ex. 6

From: Konkus, John

Sent: Saturday, April 01, 2017 6:40 PM

To: Hull, George <Hull.George@epa.gov>

Cc: Hart, Daniel <Hart.Daniel@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>; Milbourn, Cathy <Milbourn.Cathy@epa.gov>

Subject: Website work this weekend

George: per my voice message, we need to start building an updated page for the clean power plan ASAP with the goal of having it go live sometime on Monday.

Below is the outline that we would like. We have the photo we need already from Eric. Some of the links below we already have, others we will have to create. And we are creating content for those links on a parallel track. Therefore you can leave those blank and can add the link in when we have the new documents.

Is there any way we can get a little time put in on this project over the weekend so that we're off on the right foot on Monday morning?

Please call me with any questions or reply to this email. I'll be working all weekend and ready to help make this happen on time.

Thank you very much!

John

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

March 30, 2017

The Honorable Matt Bevin
Governor of Kentucky
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

Dear Governor Bevin:

On February 9, 2016, the Supreme Court of the United States stayed implementation of the Clean Power Plan (CPP) effectively "suspend[ing] administrative alteration of the status quo." *Nken v. Holder*, 556 U.S. 418, 428 n.1 (2009). Further, pursuant to the Administrative Procedure Act, the Supreme Court has authority to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705.

Under that precedent, States and other interested parties have neither been required nor expected to work towards meeting the compliance dates set in the CPP. It is the policy of the Environmental Protection Agency (EPA) that States have no obligation to spend resources to comply with a Rule that has been stayed by the Supreme Court of the United States. To the extent any deadlines become relevant in the future, case law and past practice of the EPA supports the application of day-to-day tolling.

The days of coercive federalism are over. Accordingly, I look forward to working with you, your state experts and local communities as we develop a path forward to improve our environment and bolster the economy in a manner that is respectful of and consistent with the rule of law.

Respectfully,
A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, sweeping flourish extending from the end of the signature.

E. Scott Pruitt

Message

From: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Sent: 3/25/2017 12:05:18 AM
To: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Page, Steve [Page.Steve@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Subject: RE: Draft FR Notices for Energy EO
Attachments: 3-24 EDIT FR Notice.oilandgas 3-17 7 pm (002).docx; 3-24 EDIT FR Notice.CPS 3-22 7 pm.docx; 3-24 EDIT FR Notice.CPP 3-22 6 pm clean.docx; 3-24 EDIT FR Notice.Withdrawal.FIP and CEIP 3-23 10 pm.docx

Final edits from our end are in the attached docs.

From: Schmidt, Lorie
Sent: Friday, March 24, 2017 6:57 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: Draft FR Notices for Energy EO

We can merge your comments with DOJ's if that's easier for you.

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Greenwalt, Sarah
Sent: Friday, March 24, 2017 6:56 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Re: Draft FR Notices for Energy EO

Thanks Lorie! We are combining our comments into one redline and should have those to you guys soon. Thanks for all of the work you all have put in on these.

Sent from my iPhone

On Mar 24, 2017, at 6:53 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Unless I've missed something, I have not yet received

Attorney Client / Deliberative Ex. 5

Attorney Client / Deliberative Ex. 5

Attorney Client / Deliberative Ex. 5

Let me know if you need more from me on this. I will be checking my EPA email periodically over the week-end.

If I don't talk to you, have a great week-end!

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

<FR Notice.CPP 3-24 6 pm DOJ.docx>

<FR Notice.CPS 3-24 6 pm DOJ.docx>

<FR Notice.oilandgas 3-24 6 pm DOJ.docx>

<FR Notice.Withdrawal.FIP and CEIP 3-24 6 pm DOJ.docx>

Message

From: Albores, Richard [Albores.Richard@epa.gov]
Sent: 4/21/2017 6:29:35 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: FYI only - Late list of AAR topics

Some of the railroad environmental issues include the following (in no order):

Attorney Client / Ex. 5

Sent from my iPhone

From: So, Katherine [so.katherine@epa.gov]
Sent: 2/22/2017 9:45:51 PM
To: McGonagle, Kevin [mcgonagle.kevin@epa.gov]; McCabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: RE: Administrator Pruitt Clips 2/22/17

Below: Reuters, Huffington Post, Business Insider, Politico, Washington Post, Yahoo News, Washington Examiner, BuzzFeed News, AP, E&E News, InsideEPA, Fox News, MSNBC, The Guardian, Washington Times, The Verge, Bloomberg, Bloomberg BNA, Washington Post, Wall Street Journal, New York Times, Mother Jones, Bloomberg BNA, Politico Pro, E&E News (3), The Hill, AP (2/21), InsideClimate News (2/21), Mother Jones (2/21), Morning Consult (2/21)

Reuters

<http://www.reuters.com/article/usa-trump-pruitt-idUSL1N1G716V>

Oklahoma releases emails between new EPA head and energy firms

By Timothy Gardner 2/22/17, 3:52PM

Emails released by the Oklahoma attorney general's office show a cozy relationship between energy companies and Scott Pruitt, who was the state's top prosecutor before being sworn in last week as the new chief U.S. environmental regulator, a media watchdog group said on Wednesday.

The Center for Media and Democracy has sought the release of emails between energy companies and Pruitt for the past two years, saying they show energy companies drafted language that Pruitt's attorney general office then used in suing the U.S. Environmental Protection Agency, the office he now heads, over regulations on energy operations.

The center had sued Pruitt on Feb. 7, ahead of the Senate vote to confirm his nomination by President Donald Trump, to release the records detailing his communications with energy companies.

The attorney general's office released more than 7,500 pages of emails late on Tuesday, holding back an unknown number of documents it called exempted or privileged. Oklahoma Judge Aletia Timmons is reviewing those documents, but there is no set time for when or if they would be released.

Among the documents released were communications between Devon Energy and Pruitt's office that suggest the company gave the Oklahoma officials language on limits on methane emissions at oil and gas operations. Pruitt's office then used this language in suing the EPA over the regulations, the documents suggest. (bit.ly/2lFEymC)

The EPA did not immediately respond to requests for comment.

Devon serves as a resource with information and expertise for decision makers, and its contact with Pruitt was consistent with its policy of engaging with policymakers, company spokesman John Porretto said.

Nick Surgey, a research director at the Center for Media and Democracy, called the document release a "major breakthrough" that revealed a close and friendly relationship between Pruitt's office and the oil and gas industry, with frequent meetings, calls, and dinners.

The center said before the release of the emails that Pruitt's office had violated Oklahoma's Open Records Act by delaying their issuance.

Critics of Pruitt's nomination to head the EPA were concerned over his record on the environment - he sued the agency more than a dozen times on behalf of his oil-producing state and has doubted the science of climate change - and Democrats in the Senate held an all night debate last week trying to stop his confirmation vote until the emails were released. He was confirmed on Friday with two Democrats from energy-producing states voting for him.

A spokesman at the Oklahoma attorney general's office would not say how many documents were sent to the judge for review or how it decided which ones to fully release. The office went "above and beyond" what is required under the Open Records Act by producing records that would typically be considered ones outside the law's scope, the office said in a release.

Huffington Post

http://www.huffingtonpost.com/entry/pruitt-emails_us_58adda3ce4b03d80af71a4eb

Emails Reveal Chummy Relations Between EPA Chief And Industries He Now Regulates

By Alexander C. Kaufman, Ben Walsh, Chris D'Angelo 2/22/17, 3:26PM

During his time as Oklahoma attorney general, Scott Pruitt, the newly sworn-in Environmental Protection Agency chief, forged an alliance with industry players to fortify oil, gas and utility companies' legal challenges against Obama-era regulations that they said amounted to a "war on carbon," according to more than 7,500 pages of emails published Wednesday.

The public release of the emails was ordered last week by a judge in Oklahoma and comes just five days after the Senate narrowly voted to confirm Pruitt as EPA administrator. Pruitt's nomination faced fierce protests from environmentalists and some Democrats, who argued that his confirmation vote should be delayed until after the release of the emails.

The emails reveal a chummy relationship between Pruitt and the companies whose pollution he's now tasked with reining in. The document dump sheds new light on Pruitt's frequent collusion with Devon Energy Corporation, the Oklahoma City-based oil and gas giant. Pruitt's ties to the company, uncovered in a similar email dump published in 2014 by [The New York Times](#), became a flashpoint during his confirmation process. In particular, critics railed against Pruitt's 2011 decision to allow the company to write a three-page complaint to the EPA under his letterhead.

In 2013, Pruitt's office solicited feedback from the company before suing the federal Bureau of Land Management over proposed rules to curb emissions from methane, a potent natural gas. In a victory for Pruitt, other state attorneys general and the oil and gas lobby, a judge struck down the regulation last June.

"I thought we should insert a sentence or two regarding the recent EPA report indicating their initial estimates on methane emissions were too high," P. Clayton Eubanks, who served as Pruitt's deputy solicitor general, wrote in an email to William Whitsitt, then an executive vice president of Devon. "Any suggestions?"

The document release did not include attachments to the emails, although sometimes the names of attached files are listed, so it's unclear to what extent Devon's edits made it into the attorney general's final letter. But as [DeSmogBlog](#) noted, Pruitt's deputy later wrote: "thanks for all your help on this."

In July 2013, Pruitt gave lawyers at Devon a first crack at a letter he planned to send criticizing proposed federal restrictions on methane emissions from natural gas drilling sites. Brent Rockwood, a director at Devon, suggested edits even on a granular level.

"[O]ur legal team took another review of the AG letter, and a good recommendation was made to include footnotes to source the quotes/legal arguments," Rockwood wrote in an email sent to Pruitt's office and Whitsitt, the Devon executive. "The attached version is the same one I originally sent to you, and which we just discussed, with the exception of the added footnotes."

"Thanks for putting the AG letter into action," he added. "I think that this letter will make a strong statement and a real difference."

The emails also show Pruitt was in contact not just with individual companies but with fossil fuel industry groups as well. Pruitt met with the lobbying group American Fuel and Petroleum Manufacturers to discuss ozone limits and the renewable fuel regulations in 2013 in Washington, D.C.

After the meeting, Pruitt had his assistant put Eubanks in touch with Sarah Magruder Lyle, then a top executive at the AFPM. Lyle sent Pruitt's staff industry talking points and research on those topics, which argued among other things that clean air standards hurt the refining industry. (Lyle now runs a group that is sponsored by pipeline companies and utilities.)

Pruitt later opposed the Obama administration's Renewable Fuel Standard and ozone limits.

The White House on Wednesday did not immediately respond to a request for comment on Pruitt's emails.

Pruitt made his name suuing the EPA 13 times, repeatedly joining oil, gas and coal players — including Oklahoma Gas & Electric and the Domestic Energy Producers Alliance, an industry-backed group — in filing lawsuits to stop federal regulations. Pruitt championed the rights of Exxon Mobil Corp. in investigations into whether the oil giant committed fraud by covering up evidence that burning fossil fuels changes the climate. During his confirmation hearing, he claimed he was unsure how much lead was safe for humans to consume. Between 2002 and 2016, he received more than \$300,000 in donations from the fossil fuel industry, and even more money went to a political action committee and a super PAC that paid for the former Oklahoma attorney general's trips to Hawaii and New Orleans.

Pruitt didn't just practice a pro-fossil fuel agenda, he preached it too. In 2014, Pruitt gave a 20-minute presentation at a panel on climate regulations at George Mason University. Ahead of the event, Henry Butler, dean of the college's law school, set the tone of the discussions in an email sent to Pruitt and other panelists.

"For purposes of our discussion, please assume that there is a war on carbon and that there are some benefits to the reduction in carbon emissions," he wrote. "What is often missing from the policy discussion is the costs."

And just in case the energy industry and conservative backers needed reminding that they had Pruitt's pen, and full support was at their disposal, Pruitt's office pushed press clips praising his work against climate regulation out to some of the same organizations that helped to direct Pruitt's efforts.

In July 2013, conservative magazine The Weekly Standard published an article praising Pruitt and other Republican attorneys general as "the unsung heroes in challenging the Obama agenda."

Two days after the story came out, Aaron Cooper, Pruitt's director of public affairs, forwarded the link to Matt Ball, the Oklahoma director of Americans for Prosperity, a conservative political advocacy group that receives funding from the Koch brothers.

"It's a good read and possibly worthy of use on social media. :)," Cooper wrote.

Later that day, Ball responded, saying, "Just tweeted this from AFP acct."

Business Insider

<http://www.businessinsider.com/scott-pruitt-epa-emails-2017-2>

Scott Pruitt's emails reinforce his coziness with the very industries the EPA regulates

By Rafi Letzter 2/22/17

After a close Senate vote on Friday, Scott Pruitt ascended from the position of frequent critic of the Environmental Protection Agency to become its boss.

Up until the last minute before the vote, Democrats objected to the former Oklahoma Attorney General's confirmation. They argued the vote should be put off until a trove of emails between Pruitt's Oklahoma office and fossil fuel companies were released.

Pruitt had avoided releasing the emails despite repeated requests for more than two years, until Thursday, the day before his confirmation. An Oklahoma judge ordered the emails released to the Center for Media and Democracy, a watchdog group behind the lawsuit, by Tuesday. On Wednesday, CMD published the emails on its website, with the exception of a few the Attorney General's office redacted for further review by the judge.

In a sense, the emails tell an old story: Pruitt is a man with deep ties to fossil fuel companies who has focused a great deal of government power on on backing their interests.

Back in 2014, Eric Lipton of The New York Times won a Pulitzer Prize for an investigation that showed Pruitt was sending letters to the federal government under his own name that were in fact written by lawyers and lobbyists for Oklahoma oil and gas company Devon Energy. And Pruitt appears to have made a false claim under oath during his confirmation hearings to suggest he pursued an environmental lawsuit against a company.

The Senate confirmed Pruitt despite that known reality, and there doesn't appear to be anything in the thousands of emails (which Business Insider has partly but not completely reviewed) that could potentially put his position at the head of the EPA in jeopardy.

But the emails do fill in gaps and add chapters to the story of Pruitt's previous dalliances with big, EPA-opposing business interests.

As CMD highlighted in their press release, the emails show Pruitt's then-chief of staff coordinating legal efforts with Devon Energy. The oil and gas lobbying group American Fuel and Petrochemical Manufacturers also passed along language for petitions opposing Obama-era ozone regulations and the Renewable Fuel Standard Program. Pruitt's office later filed both petitions.

It's important to note that none of these conversations and coordinated efforts with the industry appear to have been illegal. Rather, it just further reinforces the fact that Pruitt is a wildly unusual pick to lead the EPA. But if Trump or the Senate had a problem with that, it's unlikely they would have put him in the role despite the opposition of nearly 800 former EPA staff

Politico

<http://www.politico.com/story/2017/02/scott-pruitt-epa-emails-oil-gas-industry-235269>

Pruitt emails show close ties to oil, gas interests

By Alex Guillen 2/22/17, 2:24PM

Thousands of newly released emails show the close, casual relationship between the oil and gas industry and new Environmental Protection Agency Administrator Scott Pruitt, who in his former role as Oklahoma attorney general led the legal fight to derail many of the pollution regulations opposed by the energy industry.

None of the communications, most of which were sent by Pruitt's staff in 2013 and 2014, appear to reveal any illegal activities, and Pruitt's alliance with fossil fuel companies and conservative groups like the Koch-connected Americans for Prosperity has been public knowledge for years. But they do underscore the dramatic shift EPA is likely to see under

Pruitt, who on Tuesday told EPA employees in his first address as administrator that "regulators exist to give certainty to those that they regulate."

And many of the regulations discussed in the emails still sit before EPA today, putting them squarely in Pruitt's lap.

The release of the emails was ordered by a state judge last week, and the more than 7,500 pages were made public just days after the Senate confirmed Pruitt to head the agency in a mostly party-line vote that Democrats had sought to delay.

"There is no valid legal justification for the emails we received last night not being released prior to Pruitt's confirmation vote other than to evade public scrutiny," said Arn Pearson, general counsel for the Center for Media and Democracy, the group that asked for the communications two years ago. "There are hundreds of emails between the AG's office, Devon Energy and other polluters that senators should have been permitted to review prior to their vote to assess Pruitt's ties to the fossil fuel industry."

A spokesman for the state attorney general's office said on Wednesday that some of these emails had been released previously to The New York Times, which cited them in a 2014 story on Pruitt's "secretive alliance" with oil and gas companies. He referred POLITICO to a Tuesday statement saying the AG's office went "above and beyond" the state's open records law in releasing so many communications.

Pruitt's closest ally in the energy sector appears to be Oklahoma City-based Devon Energy, one of the largest oil producers in the U.S. It authored a letter on methane emissions that Pruitt largely copied and sent to EPA.

The new emails show several communications between Pruitt's staff and Devon, in particular Bill Whitsitt, formerly the company's executive vice president for public affairs. Whitsitt, now retired, sent a draft letter to Pruitt aides in May 2013 that he hoped would be sent by a bipartisan group of attorneys general to EPA to counter a petition from Northeastern states seeking tighter methane regulations.

"It would be a shot across the bow, warning EPA not to go down a negotiated-rulemaking or wink-at-sue-and-settle tee-up process," Whitsitt wrote.

"It seems to me this would also be a logical outgrowth of the fossil energy AGs meeting and could be powerful with a number of signers. It is also the kind of thing that in the future could be run through the clearinghouse we discussed," he added, in apparent reference to the alliance The New York Times story cited in 2014.

In May 2013, Pruitt's deputy solicitor general, Clayton Eubanks, asked Whitsitt for feedback on a draft letter to EPA regarding methane emissions. Eubanks specifically asked for advice on incorporating an EPA report that found initial estimates of methane emissions from certain source categories were too high.

Whitsitt responded with various suggested changes, including some that were "improvements from one of our experts." Neither of Whitsitt's documents with suggested improvements was included in the released emails.

A month later, in June 2013, Whitsitt wrote to Pruitt's chief of staff, Melissa Houston, to thank her for including him in a meeting that day with Pruitt. "I think we got to a good place with respect to the clearinghouse concept to assist AGs in addressing federalism issues," he wrote, again referencing the alliance.

Houston responded: "I am very excited about this project moving forward and feel that we are on the right track. This will be an amazing resource for the AGs and for industry. I so appreciate you providing your expertise and guidance as we move forward."

Whitsitt also replied to Eubanks' questions on the Bureau of Land Management's proposed fracking rule. Whitsitt noted the White House was reviewing the proposal, "hence our asks that calls be made to the head of OMB and/or OIRA pretty quickly." He included a leaked copy of the BLM proposal.

Brent Rockwood, another top Devon executive, in July 2013 followed up on an attorneys general letter regarding the fracking rule. Devon's legal team had recommended including footnotes to source facts and legal arguments, Rockwood wrote.

"Thanks for putting the AG letter into action, and I think that this letter will make a strong statement and a real difference. Do you think that we will get any Democrats to sign the letter?" he asked.

Devon was not the only company to benefit from working with Pruitt. Stuart Solomon, president of AEP's utility subsidiary Public Service Co. of Oklahoma, wrote to Pruitt in February 2014 thanking him for helping the company deal with EPA on a regional haze issue.

"Your lawsuit against EPA, and your encouragement of our efforts to settle this issue in a way that benefits the state, were instrumental in giving us the time and the opportunity to develop a revised state plan," thus avoiding an EPA-imposed federal plan, Solomon wrote.

In August 2013, Peter Glaser, a Washington attorney from the law firm Troutman Sanders who represented Arizona in a haze lawsuit, sent Pruitt's office a rough draft of a friend-of-the-court brief on that issue. Glaser sought to make sure his brief and one being prepared by Pruitt's office did not duplicate arguments, and he asked for advice on other arguments to make.

Pruitt also waded into ethanol issues in summer 2013.

Rich Moskowitz, general counsel for American Fuel & Petrochemical Manufacturers, briefed Pruitt's aides on the Renewable Fuel Standard, which Eubanks wrote has "obvious shortcomings and problems." AFPM and the American Petroleum Institute at the time were preparing to ask EPA for a waiver from the congressionally required mandates because of concerns the amount of ethanol required by law could not be blended into the gasoline expected to be sold in 2014.

Moskowitz urged Pruitt to file his own waiver request pushing the argument that high ethanol blending mandates would cause "severe environmental harm" because "this argument is more credible coming from a state" that has to meet national air-quality standards.

EPA did ultimately ease the corn ethanol mandate for the first time when it issued a rule covering 2014, although it cited distribution concerns, not potential environmental harm.

CMD said it plans to ask the judge reviewing the case to verify that Pruitt's private email address is searched as well after a redacted address for Pruitt was copied on several emails. Pruitt told lawmakers at his confirmation hearing that he does not use his personal address for work.

More communications from subsequent CMD records requests are expected next week.

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm_term=.a2eec9c649d6

Thousands of emails detail EPA head's close ties to fossil fuel industry

By Brady Dennis and Steven Mufson 2/22/17 2:55PM

In his previous role as Oklahoma's attorney general, the Environmental Protection Agency's new administrator regularly huddled with fossil fuel firms and electric utilities about how to combat federal environmental regulations and spoke to conservative political groups about what they call government "overreach," according to thousands of pages of emails released Wednesday.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners and other events," said Nick Surgey, research director for the Center for Media and Democracy, which has sued to compel the release of the emails.

The emails highlight an often-chummy relationship between Pruitt's office and Devon Energy, a major oil and gas exploration and production company based in Oklahoma City. The correspondence makes clear that top officials at the company met often with Pruitt or people who worked for him. Devon representatives also helped draft — and re-draft — letters for Pruitt to sign and send federal officials in an effort to stave off new regulations.

"Any suggestions?" a deputy solicitor general in Pruitt's office wrote to a Devon executive in early May 2013, including a draft of a letter the office was planning to send to the EPA regarding proposed regulations of methane emissions.

"Here you go," the executive, Bill Whitsitt replied. "Please note that you could use just the red changes, or both red and blue (the latter being some further improvements from one of our experts) or none."

"I sent the letter today," the deputy solicitor general wrote the following day. "Thanks for all your help on this."

The emails show that Pruitt and his office were in touch with a network of ultra-conservative groups, many of which in the past have received backing from billionaire brothers Charles G. and David H. Koch, the libertarian owners of Koch Industries, a major oil company. The documents detail not only how Pruitt's office at times coordinated with industry officials to fight unwanted regulations from Washington, but also how he was a highly sought after speaker at conferences and other gatherings for groups such as the American Legislative Exchange Council, which works with corporate interests and state legislators to shape key pieces of legislation.

In one example, Pruitt was a speaker at an ALEC conference on May 3, 2013, in Oklahoma City. He was part of a panel called, "Embracing American Energy Opportunities: From Wellheads to Pipelines." The event also featured a reception at the Petroleum Club and a luncheon sponsored by Koch Industries.

The Oklahoma attorney general's office handed over the batch of emails — nearly 7,000 pages in all — this week in order to meet a deadline set by a judge who ordered the documents' release following more than two years of effort by CMD, a liberal watchdog organization. The group had sued to compel the state to release the documents under public records laws. (The emails can be viewed [here](#).)

Though the emails show Pruitt's ties with a wide range of fossil fuel interests and conservative political groups, they show a particularly close relationship with Devon Energy, a major oil and gas exploration and production company based in Oklahoma City. Much of the correspondence revolves around arranging speaking engagements, obtaining contact information for people at the federal Office of Management and Budget and coordinating letter-writing efforts.

At one point, Pruitt's then-chief of staff, Melissa Houston, wrote in a Jan. 9, 2013, email to Whitsitt, Devon's vice president for public affairs, "You are so amazingly helpful!!! Thank you so much!!!"

In another email chain on March 21, 2013, Whitsitt wrote to Pruitt's office offering a draft of a letter that state attorneys general might sign and send to the then-acting EPA administrator regarding limits on methane emissions. Devon, which has substantial shale gas and shale oil drilling operations, would have been affected by the rule.

"Attached is a potential first-cut draft of a letter a (bipartisan if possible?) group of AGs might send to the acting EPA administrator and some others in the Administration in response to the NE states' notice of intent to sue for more E&P emission regulation," Whitsitt wrote. "It would be a shot across the bow, warning EPA not to not go down a negotiated-rulemaking or wink-at-a sue-and-settle tee-up process."

The company vice president gave strategic advice, too. "If sent, I'd suggest that it be made public, at least to the Hill and to policy community publications," he wrote. "It seems to me this would also be a logical outgrowth of the fossil energy AGs meeting and could be powerful with a number of signers. It is also the kind of thing that in the future could be run through the clearinghouse we discussed. Please let me know what you and General Pruitt think, or if we can help further."

That same month, Whitsitt also offered a draft of a letter for Pruitt to sign about the federal Bureau of Land Management's revised proposal of a rule on hydraulic fracturing, a drilling technique that has helped U.S. companies like

Devon sharply expand output and profits. Following up on his conversations with Pruitt, Whitsitt suggested a meeting “or perhaps more efficient, a conference call” with OMB officials.

“The attached draft letter (or something like it that Scott if comfortable talking from and sending to the acting director to whom the letter is addressed) could be the basis for the meeting or call,” he wrote. Pruitt’s chief of staff replied: “Thanks Bill – we will take a look and start working on a draft.”

Pruitt’s close ties to Devon Energy were first highlighted in 2014 by the New York Times, which reported that a letter ostensibly written by the attorney general alleging that the EPA overestimated air pollution from natural gas drilling was actually written by the company’s attorneys. “That’s actually called representative government in my view of the world,” Pruitt later said of the letter.

The emails’ release comes just days after Pruitt was confirmed as the EPA’s new leader. Senate Democrats and environmental groups made a last-minute push to delay his confirmation vote last week, contending that lawmakers — and the public — ought to be able to review his correspondence with industry officials before putting him in charge of safeguarding the nation’s environment. Republicans forged ahead anyway, and Pruitt was confirmed by a 52-to-46 vote.

In a statement Tuesday, the Oklahoma attorney general’s office said it “went above and beyond what is required under the Open Records Act and produced thousands of additional documents that, but for the Court’s order, would typically be considered records” outside the scope of the act. “This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of the Attorney General remains fully committed to the letter and spirit of the Open Records Act,” spokesman Lincoln Ferguson said.

Pruitt’s office at EPA did not immediately respond to a request for comment on Wednesday.

In an email, Devon Energy spokesman John Porretto said that the company’s engagement with Pruitt during his time as attorney general was “consistent – and proportionate – with our commitment to engage in conversations with policymakers on a broad range of matters that promote jobs, economic growth and a robust domestic energy sector.” He added, “We have a clear obligation to our shareholders and others to be involved in these discussions related to job growth, economic growth and domestic energy...It would be indefensible for us to not be engaged in these important issues.”

Environmental groups on Wednesday were quick to criticize Pruitt, arguing the emails showed once again his penchant for putting with the interests of industry over the health of ordinary citizens.

“This is Scott Pruitt’s mission statement: attack environmental safeguards, protect industrial polluters and let the public pay the price,” Rhea Suh, president of the Natural Resources Defense Council, said in a statement. “These emails tell us that he’s in league with the very industries we’ve now entrusted him to police. He so deeply imbedded himself with energy companies that they described Pruitt and his allies as ‘fossil fuel AGs,’ a badge of dishonor for a public guardian if ever there were one.”

The Oklahoma attorney general’s office withheld some documents as exempted or privileged and has asked Judge Aletia Haynes Timmons to review whether they should be released, according to the Center for Media and Democracy. Timmons also ordered Pruitt’s former office to hand over records related to five outstanding records requests by early next week.

After unsuccessfully seeking the release of Pruitt’s correspondence with fossil-fuel representatives under public records laws, the center filed suit over his refusal to turn over the documents and requested the expedited hearing that led to Timmons’s order on Thursday. In her ruling, the judge said there had been “an abject failure to provide prompt and reasonable access to documents requested.”

Pruitt sued the EPA more than a dozen times during the Obama administration, challenging the agency’s authority to regulate toxic mercury pollution, smog, carbon emissions from power plants and the quality of wetlands and other

waters. During his tenure in Oklahoma, he dismantled a specialized environmental protection unit that had existed under his Democratic predecessor and established a “federalism unit” to combat what he called “unwarranted regulation and systematic overreach” by Washington.

These moves earned him widespread opposition from environmental activists but praise from fellow Republicans and industry representatives, who saw him as a friend to businesses and a staunch opponent of federal regulations they called unnecessary and burdensome.

On Tuesday, Pruitt addressed EPA employees for the first time as their new boss. He spoke of stepping back from the aggressive regulations of recent years and said there needn’t be a contradiction between environmental protection and energy production or job creation.

“We as an agency and we as a nation can be both pro-energy and jobs and pro-environment,” he said. “We don’t have to choose between the two.”

Yahoo News

<https://www.yahoo.com/news/epa-chief-pruitts-new-emails-show-deep-ties-to-fossil-fuel-interests-184053662.html>

EPA chief Pruitt’s newly released emails show deep ties to fossil fuel interests

By Michael Walsh 2/22/17

A batch of 7,564 pages of emails and other records from Scott Pruitt’s tenure as Oklahoma attorney general — made public Wednesday morning — show that he worked with the fossil fuel industry in its efforts to roll back environmental regulations.

The documents were handed over to the [Center for Media and Democracy](#) (CMD) Tuesday night as a result of an Open Records Act request and lawsuit. Many liberals and environmentalists are outraged that the records were withheld until after Pruitt’s confirmation as administrator of the Environmental Protection Agency (EPA) on Friday.

CMD said a number of documents were redacted, and additional documents are still being withheld as “exempted or privileged.” The attorney general’s office has been ordered to hand over records related to five other CMD requests by Feb. 27, according to the watchdog organization.

Nick Surgey, a research director at CMD, said Pruitt and the attorney general’s office tried multiple times to have the records request scuttled.

“The newly released emails reveal a close and friendly relationship between Scott Pruitt’s office and the fossil fuel industry, with frequent meetings, calls, dinners and other events,” Surgey said in a statement. “And our work doesn’t stop here — we will keep fighting until all of the public records involving Pruitt’s dealings with energy corporations are released.”

CMD focused on several exchanges that appear to confirm [what critics have long said](#) about Pruitt: He was willing to use his elective office as a mouthpiece for the fossil fuel industry.

In 2013, The American Fuel & Petrochemical Manufacturers (AFPM), a trade association for the fossil fuel industry, worked with Pruitt’s office to oppose the EPA’s Renewable Fuel Standard Program (RFS), which requires a certain volume of renewable fuel to replace heating oil or petroleum-based fuel for transportation. AFPM provided Pruitt with the language to file an Oklahoma petition against the RFS, noting that “this argument is more credible coming from a State.”

Other emails show more evidence of Pruitt’s close relationship with the oil and gas production company Devon Energy. In 2014, [New York Times reporter Eric Lipton](#) exposed how Devon Energy would draft letters Pruitt would send out on his state government letterhead. A newly uncovered email shows the energy corporation helping Pruitt write a letter to the EPA about limits on methane emissions.

There's an August 2013 email from Matt Ball, an executive at Americans for Prosperity, a conservative advocacy group funded by the Koch brothers, thanking Pruitt and others for "all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states."

Last week, an Oklahoma County district judge criticized Pruitt's "abject failure" to abide by the state's Open Records Act by improperly withholding public records and ordered the attorney general's office to release thousands of emails by Tuesday, the day of his inaugural speech as EPA administrator.

Though the ruling drew attention to Pruitt's relationships within the traditional energy sector, there was tremendous pushback from progressives and environmentalists the moment President Trump nominated him to lead the EPA — an agency he sued more than a dozen times.

Environmentalists say that Pruitt's history of alliance with the fossil fuel industry runs counter to the EPA's mission of limiting pollution and protecting public health. Oil and gas companies contend that the Obama administration and the EPA's efforts to protect the environment amount to government overreach and place undue regulations on their industry.

During his inaugural address, Pruitt argued that choosing between supporting jobs and the environment is a false dilemma — although without mentioning the renewable energy industry, which environmentalists say provides jobs while limiting carbon-dioxide emissions.

"We as an agency and we as a nation can be both pro-energy and jobs, and pro-environment. That we don't have to choose between the two," Pruitt said in his address to EPA staff. "I think our nation has done better than any nation in the world in making sure that we do the job of protecting our natural resources and protecting our environment, while also respecting the economic growth and jobs our nation seeks to have."

On Wednesday morning, the Natural Resources Defense Council filed a Freedom of Information Act request for materials and communications related to the drafting of a press release issued by the EPA on the day Pruitt's appointment was confirmed. The statement was filled with criticism of the agency's activities and policies under the previous administration, calling it "tone deaf" and a "runaway bureaucracy largely out of touch with how its policies directly affect folks like cattle ranchers." Rep. Jim Bridenstine, R-Okla., for instance, is quoted calling the EPA "one of the most vilified agencies in the 'swamp' of overreaching government."

Neither the EPA nor the Oklahoma attorney general's office responded to requests from Yahoo News for comment.

Washington Examiner

<http://www.washingtonexaminer.com/emails-show-close-relationship-between-pruitt-fossil-fuel-industry-activist-group-says/article/2615468>

Emails show 'close' relationship between Pruitt, fossil fuel industry, activist group says

By John Siciliano 2/22/17, 1:15PM

Activists released more than 7,500 emails Wednesday that they say showed the fossil fuel industry's influence over new Environmental Protection Agency Administrator Scott Pruitt.

The emails were released by the Oklahoma Attorney General's office Tuesday night in compliance with an emergency court order issued Thursday. Pruitt was the state's attorney general until Friday, when he was sworn in as the nation's 14th EPA administrator.

The bulk of the emails was sent to the Center for Media and Democracy, which petitioned the court after waiting two years for the emails to be released by Pruitt's former office under normal public release channels.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners and other events," said Nick Surgey, the research director for the group, vowing to continue to press Pruitt's office to release all communications between the new EPA chief and the energy industry.

The 7,564 emails that were released are only a small portion of what the group had requested over the last two years. "We will keep fighting until all of the public records involving Pruitt's dealings with energy corporations are released — both those for which his office is now asserting some sort of privilege against public disclosure and the documents relevant to our eight other Open Records Act requests," Surgey said.

Democratic senators on the Environment and Public Works Committee had petitioned the court in Oklahoma to order the records released in the run-up to Pruitt's confirmation vote last week. The Democrats attempted to use the court order to delay the vote until after they had time to sort through the emails.

But the Republican leadership ignored the requests, saying Pruitt had answered hundreds of questions and complied with the Senate confirmation process.

The top Democrat on the environment committee, Sen. Tom Carper, D-Del., said he was disappointed that the leadership did not wait for the emails to be released before holding the vote confirming Pruitt.

Although the refinery group "was making its own case against the RFS with the American Petroleum Institute, it provided Pruitt with a template language for an Oklahoma petition, noting 'this argument is more credible coming from a state,'" the group said. "Later that year, Pruitt did file opposition to both the RFS and ozone limits."

The group also underscored an email from fracking giant Devon Energy, which showed the company helped Pruitt "draft language that was later sent by Pruitt to the EPA about the limiting of methane from oil and gas fracking."

"In 2013, Devon Energy organized a meeting between Scott Pruitt, Leonard Leo of the Federalist Society and coal industry lawyer Paul Seby to plan the creation of a 'clearinghouse' that would 'assist [attorneys general] in addressing federalism issues,'" the group said of the emails it received. "Melissa Houston, then Pruitt's chief of staff, emailed Devon Energy saying 'this will be an amazing resource for the AGs and for industry.'"

The emails do not purport to show anything illegal on the part of Pruitt and his office over the meetings and discussions included in the emails. The group does say that last week's court decision shows that the attorney general office's withholding of the records was in "violation of the state's Open Records Act for improperly withholding responsive public records and ordered his office to release thousands of emails in a matter of days."

Carper underscored that point in a statement before the Senate voted on Pruitt's nomination, saying the judge scolded Pruitt's office for its "abject failure" in abiding by the state's public records law.

Buzzfeed News

https://www.buzzfeed.com/dinograndoni/pruitt-epa-emails?utm_term=.bxy1d8Rkd#.dhV5Ak3DA

Thousands of Pages of Emails From Trump's New EPA Chief Have Been Released

By Dino Grandoni 2/22/17, 2:07PM

A day after Scott Pruitt, President Trump's new environmental chief, attempted to ease the concerns of rattled Environmental Protection Agency employees during his first visit to agency headquarters, a batch of thousands of old emails sent between his former office and members of the oil and gas industry were released under court order.

To Pruitt's environmental critics, the 7,564 newly released pages of emails further demonstrate the cozy relationship between fossil fuel interests and Pruitt, who as Oklahoma's attorney general was tasked with enforcing the state's environmental rules and representing the state to federal regulators.

Since 2015, the Center of Media and Democracy, a nonprofit group, has sought to use Oklahoma's open records law to gain access to thousands of emails sent by Pruitt's office during his six-year tenure as the state's top prosecutor. One year earlier, a *New York Times* investigative report revealed how Pruitt used language provided to him by Devon Energy, a Oklahoma City-based oil and gas company, in letters sent to the EPA.

The emails handed over to CMD on Tuesday — the first of what could be several sets the Oklahoma attorney general office is compelled by a district court to release — show employees at Devon and other fossil fuel players setting up meetings with Pruitt's office and providing arguments for Pruitt to use when petitioning the EPA.

In testimony and interviews since Trump announced his nomination, Pruitt said that his guiding philosophy as EPA administrator will be federalism — or to allow states to manage their own environmental protections fit their individual needs.

But even this overarching philosophy may be influenced from industry sources, the newly released emails show.

In 2013, for example, Devon coordinated a meeting between Pruitt and the libertarian group The Federalist Society in order to "assist AGs in addressing federalism issues." Pruitt's chief of staff at the time responded that it and subsequent meetings would be "an amazing resource for the AGs and for industry."

The correspondence also confirms the role Devon played in crafting a letter Pruitt sent to the EPA in 2013 regarding a rule limiting the emissions of methane from oil and gas fracking.

"I sent the letter today," Clayton Eubanks, deputy solicitor general, wrote in May of that year. "Thanks for all your help on this"

"Clayton: I'm glad the Devon team could help," Brent Rockwood, Devon's director of public policy and government affairs, replied.

Before Pruitt was confirmed by the Senate on Friday, Democrats in the chamber argued, unsuccessfully, that the vote must be delayed until senators had the chance to review the emails.

"Our Republican friends have a fixation on emails," Sen. Sheldon Whitehouse of Rhode Island said the day before the vote, referring to Republican-led investigations into Hillary Clinton's emails as secretary of state, before adding: "This is the wolf into the lambfold."

The delay was also attacked by Pruitt's critics. "Pruitt had it in his power to release these emails," Nick Surgey, CMD's research director, told BuzzFeed News. "But he dragged his feet."

AP
<http://bigstory.ap.org/article/f8872035a41c4e7ba21201d3cebfdfc4/emails-epas-pruitt-cozy-fossil-fuel-industry>
Emails: EPA's Pruitt cozy with fossil fuel industry

By Michael Biesecker 2/22/17, 1:16PM

WASHINGTON (AP) — While serving as Oklahoma's attorney general, new Environmental Protection Agency chief Scott Pruitt was in frequent contact with fossil fuel companies and special interest groups working to undermine federal efforts to curb planet-warming carbon emissions.

This was shown by emails released under court order late Tuesday after an Oklahoma judge ruled that Pruitt had been illegally withholding his official correspondence from the public for the last two years.

The Republican-dominated Senate voted to confirm President Donald Trump's pick to lead EPA on Friday in a largely party-line vote. Democrats had sought to delay the vote until Pruitt's emails were released.

The more than 7,000 emails show Pruitt and his staff coordinating strategy with conservative groups funded by oil and gas companies and executives, including billionaire brothers David and Charles Koch.

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E&E News

<http://www.eenews.net/greenwire/2017/02/22/stories/1060050420>

Emails show Pruitt's ties to fossil fuel industry

By Kevin Bogardus 2/22/17

Emails released today from U.S. EPA Administrator Scott Pruitt's time as Oklahoma attorney general show he and his office had a familiar if not symbiotic relationship with fossil fuel companies.

Under a court order, the Oklahoma attorney general's office began turning over 7,564 pages of emails and other records last night to the Center for Media and Democracy (CMD). The liberal-leaning watchdog group had sued Pruitt for failing to respond to its open records requests, including one ignored for more than two years.

The Senate confirmed Pruitt as EPA chief in a contentious 52-46 vote Friday. He addressed agency staffers for the first time as EPA chief yesterday.

Senate Democrats pushed to extend debate on his nomination until the emails were released, to no avail. CMD filed its open records lawsuit in part so senators could have reviewed the records before voting on Pruitt's nomination to lead EPA.

"There are hundreds of emails between the AG's office, Devon Energy Corp., and other polluters that senators should have been permitted to review prior to their vote to assess Pruitt's ties to the fossil fuel industry," Arn Pearson, CMD's general counsel, said in a statement.

Yesterday, a spokesman for the Oklahoma attorney general's office said it went "above and beyond" what is required under the law, providing thousands of additional documents in response to the litigation.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of Attorney General remains fully committed to the letter and spirit of the Open Records Act," said Lincoln Ferguson, the Oklahoma attorney general spokesman.

Pruitt's record as a vocal EPA critic that sued the agency over several of its regulations has long been under scrutiny, including in a December 2014 *New York Times* [story](#) that used several documents from Pruitt's office. Many of the same companies that were shown to have been in touch with Pruitt as Oklahoma attorney general will now be regulated by EPA with Pruitt as the agency's chief.

At his confirmation hearing last month, Pruitt said he was representing his constituents when his office took action against EPA at the urging of fossil fuel companies.

"The efforts that I took as attorney general were representing the interests of the state of Oklahoma," Pruitt said.

Emails released today show Pruitt and his staff at the attorney general's office were in close contact with energy interests.

In 2013, Pruitt's office worked with Devon Energy, an Oklahoma-based oil and gas producer, to rally other attorneys general against the Bureau of Land Management's proposed rules on hydraulic fracturing.

Devon executives reviewed a draft of an unsigned letter from the Oklahoma attorney general's office, which was intended for other states' lawyers to sign. The letter included similar arguments to Devon's written comments and included some passages that were identical.

"I think that this letter will make a strong statement and a real difference," wrote Brent Rockwood, Devon public policy director, in an email to Deputy Solicitor General Clayton Eubanks. "Do you think that we will get any Democrats to sign the letter? Also, when you finalize the document and send it out, can I please get a copy for my records?"

EPA was also targeted by Pruitt's office.

In September 2013, mining industry lawyer Peter Glaser reached out to the Oklahoma deputy solicitor general about the state's lawsuit against regional haze requirements. At the time, Glaser was representing Arizona in a challenge to EPA's authority to impose federal implementation plans to reduce regional haze pollution.

Two months earlier, in a blow to Pruitt, the 10th U.S. Circuit Court of Appeals ruled that EPA acted reasonably when it disapproved a state haze plan on the grounds that it did not do enough to cut sulfur dioxide emissions. That dispute started in March 2011, two months into Pruitt's tenure as Oklahoma's attorney general ([Greenwire](#), Feb. 14).

Glaser suggested a brief he had filed on Arizona's behalf "could be a fruitful argument to make" in Oklahoma's effort to appeal the ruling.

Eubanks commended the brief, saying he had received a copy "from someone recently."

"Very well written, we definitely used it to try and focus our arguments on the standard of review issue in our Petition for Rehearing En Banc," Eubanks wrote.

He added, "Amicus support is welcomed and we appreciate the support, especially given the broad impact the panels incorrect decision will have nationwide."

The litigation sputtered to an end in 2014 when the U.S. Supreme Court declined to take Pruitt's appeal.

Pruitt also worked closely with the American Fuel & Petrochemical Manufacturers to oppose an EPA proposal to increase the renewable fuel standard.

The Oklahoma attorney general filed an amicus brief with the high court opposing the proposal in March 2013.

But over the summer months of 2013, his office continued to coordinate with AFPM. The group's lobbyists frequently offered legal strategy to the Oklahoma attorney general's office.

In a July 12, 2013, email, AFPM general counsel Richard Moskowitz informed Eubanks that his group and the American Petroleum Institute planned to file a waiver later that month.

"We think it would be most effective for Oklahoma to file a separate waiver petition that emphasizes 'severe environmental harm,' as this argument is more credible coming from a State with primary responsibility for achieving and maintaining attainment with the NAAQS [National Ambient Air Quality Standards]," Moskowitz said.

A couple of months later, an AFPM vice president, Sarah Magruder Lyle, reached out to Melissa Houston, Pruitt's chief of staff.

"Hey lady," she wrote, before continuing, "I have some language for you on the RFS waiver letter, but was hoping we could chat before I sent it to you so I can give you a little context."

In November 2013, EPA announced it was lowering the RFS standard for the first time in its history.

Pruitt's office put out a press release praising the decision.

"The evidence is clear that the current ethanol fuel mandate is unworkable," Pruitt said. "The decision by the EPA to lower that standard is good news for Oklahoma consumers."

Obama admin's 'nasty tactics'

Pruitt's office also sought to build relationships with conservative-leaning think tanks and activist groups.

In July 2013, Aaron Cooper moved from the office of Oklahoma Gov. Mary Fallin (R) to the attorney general's office. He told colleagues that in addition to press-related duties, he would work on "public affairs outreach and strategic communications strategy."

Soon after joining, Cooper reached out to Matt Ball of Americans for Prosperity to "talk about how the AG's office and AFP can work together." And in August, he inquired with Ball about a speaking slot at AFP's national convention.

Cooper worked closely with Ball. The two traded articles to post on social media and made plans to meet for coffee. In planning for the national meeting, Cooper and Ball worked out what Pruitt would discuss in a panel discussion with Sen. James Lankford (R-Okla.).

Ball said he would look to Pruitt to focus on the "heavy hand of federal govt infringing on states rights by mandating how much Oklahomans pay for electricity."

Ball added that an official from the Competitive Enterprise Institute would talk about costs of federal regional haze regulations, so Pruitt could highlight his opposition to EPA's "sue-and-settle" practices with environmental groups.

"That way you guys don't have to deliver those messages and can focus on what the AG does best, opposing the Obama administration and its nasty tactics on the environment," Ball said.

In a follow-up email about the event in August, Ball said "this is an excellent opportunity for the AG to discuss the role of attorneys general as a last line of defense for states rights against overly intrusive federal regulation of which EPA environmental is only one example."

Cooper also worked with the Oklahoma Council of Public Affairs, which bills itself as a local version of the Heritage Foundation.

In August 2013, Cooper asked staff there for "some contacts at Heritage to whom I can send updates like this?" Attached was a press release about Pruitt's efforts to fight President Obama's national health care law.

Today's email release may be the first of many for Pruitt. Because of CMD's lawsuit, more records should be forthcoming from his time as Oklahoma attorney general.

On Feb. 27, the attorney general's office has been ordered to deliver records in response to five open records requests by CMD, according to the group. Further, CMD will ask the court to review records that have been redacted while the judge is also reviewing an unknown number of documents that could be released as well.

Click [here](#), [here](#), [here](#) and [here](#) to read the emails released to CMD.

InsideEPA

<https://insideepa.com/daily-news/automakers-formally-launch-bid-reopen-epa-vehicle-ghg-standards>

Automakers Formally Launch Bid To Reopen EPA Vehicle GHG Standards

By Doug Obey 2/22/17

Automakers are formally urging EPA Administrator Scott Pruitt to withdraw the agency's decision to retain its light-duty vehicle greenhouse gas (GHG) standards for model years (MY) 2022-2025, arguing that the agency has ample authority to scrap the determination and "resume" a joint mid-term review of the standards with the Department of Transportation (DOT).

The request is not unexpected, given prior harsh critiques from automakers of EPA's Jan. 13 decision to retain the vehicle standards in the closing days of the Obama administration.

But the recent request offers another sign that continuing uncertainty will persist around EPA's vehicle GHG program -- with Pruitt already indicating prior to his Senate confirmation that he planned to review the Obama EPA determination. That raises the prospect of a clash between the agency and California regulators, who have vowed to push forward with aggressive vehicle GHG programs.

"The Final Determination is the product of egregious procedural and substantive defects and EPA should withdraw it," the Alliance of Automobile Manufacturers writes in [a Feb. 21 letter to Pruitt](#) that summarizes an array of auto industry objections to the Obama EPA decision to keep the standards in place.

The letter focuses largely on industry's request to resume the mid-term review of the MY 2022-2025 GHG standards, and it does not have a specific request regarding the rule's stringency. However, it also floats a range of arguments that could eventually serve to weaken the standards.

The group Global Automakers also sent Pruitt a similar letter seeking to reopen the decision.

The pleas are the industry's latest response to the Obama EPA's determination, which came pursuant to a promised mid-term review of those standards. Industry critics say the move significantly accelerated the mid-term review process, which was expected to conclude in mid 2018.

Vehicle Standards

Multiple observers have interpreted the last-minute decision, first proposed just after the November election, as an attempt to make it more difficult for the Trump EPA to weaken the standards. EPA stated in its final decision that its technical analysis does not support making the current GHG standards less stringent and could have supported a decision to tighten them.

The alliance letter also highlights procedural arguments that it should be a relatively simple matter for EPA to reverse course. And it comes as some EPA critics are separately sharpening their attack on the agency's 2009 waiver authorizing California's vehicle GHG program -- a program that now significantly complicates any EPA effort to weaken its light-duty vehicle GHG standard.

The alliance argues that the final determination is a rule -- not an adjudication as EPA claims -- making the decision subject to a regulatory freeze now in place for last-minute Obama administration rules.

"[A] wealth of precedents confirmed that the Final Determination is a rule, and all rules not yet published in the *Federal Register* are subject to the regulatory freeze," the alliance says.

The alliance then offers alternative rationales for a quick EPA reversal "on its own initiative," whether or not EPA under Pruitt continues to argue that its determination is not a formal rule.

"If it is a rule, it is clearly a nonfinal one, because it has not been published in the *Federal Register*," the alliance says, citing a 1996 case -- *Kennecott Utah Copper Corp. v. U.S. Department of Interior* -- in the U.S. Court Of Appeals for the District of Columbia Circuit as a basis to withdraw the final determination without a formal notice-and-comment rulemaking.

"Even if EPA continues to endorse the view that the Final Determination is an adjudication, however, EPA has brought inherent power to reconsider its decision 'within the period for taking an appeal,'" the alliance claims, citing other court precedents, including a 1984 D.C. Circuit decision in *American Methyl Corp. v. EPA*.

'Abrogated' Commitment

The rest of the letter outlines an array of alleged procedural and substantive flaws in EPA's determination that should justify a prompt withdrawal of the decision, largely summarizing persistent industry criticism of the decision.

"EPA has abrogated its commitment to a robust midterm evaluation," the alliance says, reprising claims that the move scrapped prior EPA and DOT commitments to propose a decision on the determination prior to mid 2017 of the earliest.

"The industry took the agencies at their word, commissioning complex studies critical to assessing the MY2022-2025 standards and the process used by EPA in its analysis, that we had expected to add to the administrative record for the Midterm Evaluation in 2017," the alliance says.

The industry group also faults the agency for rejecting its request to extend the comment period on its proposed determination, and contends that EPA's "unilateral announcement of its Final Determination" amounts to "failure to harmonize its greenhouse gas emissions standards" with DOT's fuel economy standards. Due to earlier statutory restrictions, DOT has not yet issued fuel economy limits for MY 2022-2025.

The alliance also reopens an array of technical and cost arguments against EPA's decision to retain the standards, including claims the vehicle standards will require more use of electrification than EPA has assumed; that there are "substantial discrepancies" between EPA and DOT's technology and cost assumptions related to the MY 2022-2025 standards; and that EPA improperly failed to conduct analysis of consumer acceptance of compliance technologies.

The letter is one of the first formal requests to Pruitt to reconsider Obama-era GHG policies, but it is also significant harbinger of future analysis the auto industry is poised to release regarding the vehicle GHG standards.

"[A]nalysis commissioned according to EPA's original timetable is ongoing and the Alliance expects that new information relevant to the Final Determination's underlying assumptions and resulting analysis will soon emerge. EPA's rushed timetable, coupled with its about-face on the timing of the Midterm Evaluation prevented consideration of this information," the letter says. -- *Doug Obey* (dobey@iwppnews.com)

Fox News

<http://www.foxnews.com/politics/2017/02/22/emails-reveal-epa-chief-pruitts-work-with-oil-gas-companies.html>

Emails reveal EPA chief Pruitt's work with oil, gas companies

By Barnini Chakraborty 2/22/17

EPA Administrator Scott Pruitt worked closely with major oil and gas producers, electric utilities and political groups to roll back numerous environmental regulations during his time as Oklahoma's attorney general, new records reveal.

An Oklahoma judge ordered the release of thousands of emails between Pruitt and fossil fuel companies like Koch Industries and Devon Energy last week -- after he and the state AG's office were accused of ignoring multiple records requests.

The group that sought the emails, the Center for Media and Democracy, pointed to the messages to accuse Pruitt of being too close to the industries he'll now regulate.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry," Nick Surgey, research director at CMD, said in a statement Wednesday.

The emails were released days after Pruitt was narrowly confirmed by the Senate to lead the EPA. Pruitt was an outspoken critic of the agency's policies during the Obama administration, and the emails shed light on how he fought against its regulations.

One email showed that American Fuel & Petrochemical Manufacturers coordinated opposition in 2013 to both the Renewable Fuel Standard Program and ozone limits with Pruitt's office.

CMD said the group provided Pruitt with "template language" for an Oklahoma petition, under the assumption that the argument "is more credible coming from a State."

Pruitt filed opposition to both the RFS and ozone limits in 2013.

Other emails highlight the apparently close relationship Pruitt had with Devon Energy. The company helped Pruitt draft language in a letter he sent to the EPA about the limiting of methane from oil and gas fracking, according to CMD.

Devon also helped organize a meeting between Pruitt, coal industry lawyer Paul Seby and Leonard Leo of the Federalist Society to create a "clearinghouse" that would "assist AGs in addressing federalism issues."

In another email dated August 2013, Matt Ball, an executive at Americans for Prosperity, sent Pruitt an email thanking him and his "respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states."

Pruitt was confirmed to head up the EPA after a lengthy floor debate in the Senate. Democrats blasted him for vowing to roll back Obama-era environmental regulations and took issue with past comments he made where he challenged the science behind climate change.

Republicans, fed up with overregulation, argued Pruitt was the right candidate to scale back the size and reach of the EPA.

Pruitt delivered his first remarks to EPA employees on Tuesday, urging them to "avoid" regulatory "abuses" and balance economic and environmental needs.

"We as an agency and we as a nation can be both pro-energy and jobs and we can be pro-environment, and we don't have to choose between the two," Pruitt said.

It was on the eve of his confirmation that Pruitt was ordered by the judge to turn over more than 2,000 documents. Democrats used the development to push for a delay in the vote, but did not succeed.

Senate Majority Leader Mitch McConnell slammed efforts to postpone the vote as another delay tactic by Democrats that was "unprecedented, harmful and pointless."

Arn Pearson, general counsel for CMD accused the AG's office of trying to "evade public scrutiny" by releasing the emails Tuesday night.

Calls to the EPA and Devon Energy for comment were not immediately returned.

MSNBC

<http://www.msnbc.com/rachel-maddow-show/new-emails-shed-light-epa-chiefs-industry-ties>

New emails shed light on EPA chief's industry ties

By Steve Benen 2/22/17, 12:49PM

Donald Trump chose so many top administration officials who were hostile to their agencies' core mission that the nominations almost seemed sarcastic. The president chose Betsy DeVos to lead the Department of Education despite her opposition to public schools; he chose Andy Puzder to lead the Department of Labor despite his opposition to workers; and Trump chose Scott Pruitt to lead the EPA despite his overt hostility towards environmental safeguards.

Pruitt, who clashed with the EPA during his tenure as attorney general of Oklahoma, spoke to the agency's employees yesterday, and by some measures, the new administrator's remarks were not well received.

Rachel Maddow reports on the confirmation of Scott Pruitt to head the EPA despite the best efforts of environmentalists, but notes that in just a few days, thousands of pages of Pruitt e-mails will be release on a judge's order that could complicate...

But while Pruitt settles into his new office, we're not yet done scrutinizing the work he did before he reached the EPA. The *New York Times* reported this morning:

During his tenure as attorney general of Oklahoma, Scott Pruitt, now the Environmental Protection Agency administrator, closely coordinated with major oil and gas producers, electric utilities and political groups with ties to the libertarian billionaire brothers Charles G. and David H. Koch to roll back environmental regulations, according to over 6,000 pages of emails made public on Wednesday.

The publication of the correspondence comes just days after Mr. Pruitt was sworn in to run the E.P.A., which is charged with reining in pollution and regulating public health.

If you missed Rachel's coverage of this last week, it's a doozy of a story. Pruitt, in effect, was illegally hiding official emails that documented his cooperation with the oil and gas industries – the industries he'll ostensibly help oversee as the head of the EPA. The Center for Media and Democracy filed suit to obtain the emails Pruitt wanted to hide, and last week, a judge ordered their release.

This, of course, unfolded *before* the Senate confirmation vote, which led Democrats to make an obvious request: members should wait a few days to review the documents before deciding whether to give Pruitt the job. Republican leaders refused – saying it made more sense to vote on the nomination with less information about Pruitt's professional background, instead of more.

Asked why he couldn't wait for senators to have a more complete picture, Senate Majority Leader Mitch McConnell (R-Ky.), doing his best imitation of Bartleby the Scrivener, said, "Because I choose not to."

But Senate Republicans rushing Pruitt through the confirmation process and into the EPA didn't make the underlying controversy go away. The vote simply punted the controversy into this week, putting the mess on Pruitt's desk during his first week on the job.

And while it'll take a while to review this first batch of documents, the early takeaway was predictable: as Oklahoma's A.G., Pruitt had a hand-in-glove alliance with the industries he's now supposed to regulate, while combating the environmental agency he's now expected to lead.

"Thank you to your respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states," said one email sent to Mr. Pruitt and an Oklahoma congressman in August 2013 by Matt Ball, an executive at Americans for Prosperity. That nonprofit group is funded in part by the Kochs, the Kansas business executives who spent much of the last decade combating federal regulations, particularly in the energy sector. "You both work for true champions of freedom and liberty!" the note said.

As attorney general of Oklahoma, Mr. Pruitt took part in 14 lawsuits against major E.P.A. environmental rules, often in coordination with energy companies such as Devon Energy, an Oklahoma oil and gas producer, and American Electric Power, an Ohio-based electric utility. The emails show that his office corresponded with those companies in efforts to weaken federal environmental regulations – the same rules he will now oversee.

A total of 52 senators voted to put Pruitt in charge of the EPA anyway. Given a choice to delay the vote a week until after members could review these emails, Senate Republicans refused.

A Center for Media and Democracy spokesperson said in a written statement, "The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners, and other events."

Note, this isn't the end of the story: the next round of emails is scheduled to be released on Monday.

The Guardian

https://www.theguardian.com/environment/2017/feb/22/scott-pruitt-emails-oklahoma-fossil-fuels-koch-brothers?CMP=share_btn_tw

New EPA head Scott Pruitt's emails reveal close ties with fossil fuel interests

By Oliver Milman and Dominic Rushe 2/22/17

The close relationship between Scott Pruitt, the new administrator of the Environmental Protection Agency, and fossil fuel interests including the billionaire Koch brothers has been highlighted in more than 7,500 emails and other records released by the Oklahoma attorney general's office on Wednesday.

The documents show that Pruitt, while Oklahoma attorney general, acted in close concert with oil and gas companies to challenge environmental regulations, even putting his letterhead to a complaint filed by one firm, Devon Energy. This practice was first revealed in 2014, but it now appears that it occurred more than once.

The emails also show that American Fuel and Petrochemical Manufacturers, an oil and gas lobby group, provided Pruitt's office with template language to oppose ozone limits and the renewable fuel standard program in 2013. AFPM encouraged Oklahoma to challenge the rules, noting: "This argument is more credible coming from a state." Later that year, Pruitt did file opposition to both of these regulations.

The letters also show the cosy relationship between Pruitt and the American Legislative Exchange Council (Alec), the influential US lobbying network of Republican politicians and big businesses, and other lobby groups sponsored by the Koch brothers, the billionaire energy investors who have spent decades fighting against environmental regulation.

Alec has consistently challenged the science on climate change and fought against tougher environmental regulation. Companies including Google, Ford and Enterprise Rent-a-Car have quit Alec in protest of its climate change activities.

The emails contain correspondence between Pruitt's executive assistant and Amy Anderson, Alec director and Oklahoma membership contact, about Pruitt's appearance at a May 2013 Alec board meeting in Oklahoma City.

That meeting attracted more protesters than attendees, with 600 firefighters, teachers, environmentalists and church leaders carrying signs reading "ALEC is Not OK" and chanting: "Backroom deals are Alec's game / Sweetheart deals for corporate gain."

Pruitt addressed a workshop entitled "Embracing American Energy Opportunities: From Wellheads to Pipelines".

The emails state that Pruitt spoke "on state primacy in oil and gas regulation and the EPA's sue & settle modus operandi". The lunch meeting was sponsored by Koch Industries, a major Alec sponsor.

Pruitt was congratulated for his work on pushing back against the EPA by another Koch-backed pressure group.

"Thank you to your respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states," said one email sent to Pruitt and an Oklahoma congressman in August 2013 by Matt Ball, an executive at Americans for Prosperity, a nonprofit group also funded in part by the Kochs. "You both work for true champions of freedom and liberty!" the note said.

Last week, an Oklahoma judge ordered that emails from a January 2015 open records request be released by Tuesday. A further batch of emails is due to be turned over next week. The Center for Media and Democracy, which has made nine separate open records requests for Pruitt's emails, said it will attempt to obtain all of the sought-after communications without exceptions.

Pruitt was confirmed as EPA administrator on Friday. Democrats had sought to delay the Senate vote until the emails were released but were unsuccessful.

"The emails show a very cosy relationship between Pruitt's office and particularly Devon Energy, as well as other coal, oil and gas companies," said Nick Surgey, research director at the Center for Media and Democracy.

"Pruitt is the world's top environmental regulator now and these emails raise serious conflict of interest concerns. He has very close ties to fossil fuel firms and has shown himself to be generally opposed to the rules the EPA has to protect the environment."

Washington Times

http://www.washingtontimes.com/news/2017/feb/22/emails-close-relationship-pruitt-energy-industry/?utm_source=RSS_Feed&utm_medium=RSS

Emails show 'close and friendly' relationship between Pruitt, energy industry: Watchdog group

By Ben Wolfgang 2/22/17

Newly installed EPA administrator Scott Pruitt cultivated a “close and friendly” relationship with oil-and-gas companies during his tenure as Oklahoma attorney general, a watchdog group charged Wednesday, pointing to documents showing Mr. Pruitt’s office worked hand-in-hand with fossil-fuel companies in the fight against Obama-era energy regulations.

More than 7,000 pages of emails from the Oklahoma attorney general’s office were made public Wednesday morning following a judge’s order last week. Democrats and other critics of Mr. Pruitt argue the messages prove that the EPA chief frequently colluded with oil-and-gas firms while Oklahoma’s attorney general, raising questions about whether he’s fit for his new role.

While the messages do not appear to contain any smoking guns that could imperil Mr. Pruitt’s future, they do contain frequent communication between the Oklahoma attorney general’s office and energy companies, energy industry lobbying groups, and powerful conservative organizations such as Americans for Prosperity.

In one 2013 back-and-forth, Mr. Pruitt’s office seems to work closely with the American Fuel & Petrochemical Manufacturers (AFPM) in an attempt to sink the federal Renewable Fuel Standard, a set of regulations requiring ethanol and other biofuels to be blended with the nation’s gasoline supply. The AFPM provided Mr. Pruitt’s office with draft language it could use to challenge the standard in court.

“This argument is more credible coming from a state,” an AFPM official said in an email.

Other messages show close coordination between Mr. Pruitt’s office and Devon Energy, an Oklahoma-based energy company. The two sides spoke frequently as they worked on a strategy to oppose federal regulations on fracking.

Mr. Pruitt later sent a letter to the EPA opposing the rules, using language largely written by Devon Energy. The emails show that draft letters were sent back and forth between Devon Energy and the attorney general’s office, with Devon Energy leaders making changes and suggestions.

The watchdog group Center for Media and Democracy, who sued to get the emails, said the disclosures prove once again the close ties between Mr. Pruitt and the fossil-fuels industry. Senate Democrats tried to delay Mr. Pruitt’s confirmation vote last week until after the emails were released, but their efforts failed.

“There is no valid legal justification for the emails we received last night not being released prior to Pruitt’s confirmation vote other than to evade public scrutiny,” said Arn Pearson, general counsel for the Center for Media and Democracy. “There are hundreds of emails between the AG’s office, Devon Energy, and other polluters that senators should have been permitted to review prior to their vote to assess Pruitt’s ties to the fossil fuel industry.”

In testimony before the Senate last month, Mr. Pruitt defended his close working relationship with Devon Energy and other oil-and-gas companies, saying it was his duty to fight on behalf of Oklahoma industries against burdensome federal regulations.

“That was an effort that was protecting the state’s interest,” he said last month. “It was particular to an industry ... There was concern expressed by that industry.”

In its own statement Tuesday night, the Oklahoma attorney general’s office said it was complying with the judge’s order even though the push for the emails was driven by partisan politics.

“The office went above and beyond what is required under the Open Records Act and produced thousands of additional documents that, but for the court’s order, would typically be considered records outside the scope of the act,” Lincoln Ferguson, press secretary for the attorney general’s office, said in a statement. “This broad disclosure should provide affirmation that, despite politically motivated allegations, the office of attorney general remains fully committed to the letter and spirit of the Open Records Act.”

The EPA did not offer comment Wednesday in response to the email release.

Thousands of additional email records are being reviewed by a federal judge and could be released soon.

The Verge

<http://www.theverge.com/2017/2/22/14697816/epa-administrator-scott-pruitt-emails-fossil-fuel-industry>

New EPA head is awfully friendly with the industry he should regulate, emails show

By Alessandra Potenza 2/22/17, 11:58AM

The new administrator of the Environmental Protection Agency, Scott Pruitt, closely worked with major oil and gas companies, electric utilities, and political groups to undo environmental regulations, according to [more than 7,000 pages of emails made public today](#). Pruitt now leads the government agency responsible for protecting the environment and regulating pollution.

Pruitt was ordered to release the emails by an Oklahoma judge, in response to a lawsuit by the Center for Media and Democracy. Democrats had urged the Senate Republican majority leader Mitch McConnell of Kentucky to delay Pruitt's confirmation hearing until after the emails were released, but with no success. Pruitt was confirmed as head of the EPA just five days ago.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners, and other events," Nick Surgey, research director at the Center for Media and Democracy, [said in a statement](#). "And our work doesn't stop here – we will keep fighting until all of the public records involving Pruitt's dealings with energy corporations are released." More emails from the Oklahoma Attorney General office are expected to be released on February 27th.

Pruitt has been one of the most contentious of President Donald Trump's nominees. As Oklahoma's attorney general, he made a name for himself for bringing more than a dozen lawsuits against the EPA, meant to roll back major environmental rules. In these lawsuits, he often worked in coordination with several fossil fuel and electric utility companies, such as Devon Energy and American Electric Power. As EPA administrator, he will now be responsible for enforcing those environmental regulations he tried to undo and regulate the companies he worked with.

"Thank you to your respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states," said one 2013 email sent to Pruitt by Matt Ball, an executive at the nonprofit group Americans for Prosperity, [according to The New York Times](#). That nonprofit has ties with Charles and David Koch, the billionaire brothers who've worked to undo federal regulations in the energy sector for years.

Yesterday, during his first speech to the EPA, Pruitt told around 100 EPA employees that the agency will be "pro-energy and jobs and pro-environment." He also said he wants to give much authority for environmental protection back to the states. In his first interview as the head of the EPA [with The Wall Street Journal](#), Pruitt said he expects to roll back the Clean Power Plan, Obama's landmark environmental policy to reduce greenhouse gas emissions and meet the goals set under the Paris Agreement.

Pruitt has already received strong opposition from several EPA employees now under his control. One current EPA staffer, who requested anonymity, [told Mother Jones](#) about the fear felt at the agency. The EPA official also vowed resistance. "Despite the long odds we face, we will never stop working to protect every person's right to have a healthy place to live, work, and play," the employee told *Mother Jones*. "And if the new administrator casts me out of the job I love, I will not stop working toward the principles that have always animated my life. This is who I am, and that will never change. I stand in solidarity with brothers and sisters that work to protect human rights, human health, and the environment here in the US and all over the world. The struggle continues."

Today's emails likely won't cause Pruitt many problems, however, according to the *New York Times*. In fact, the emails confirm what was already revealed by emails and documents disclosed to the *Times* in 2014. At that time, [the newspaper published a story about](#) Pruitt's connection with energy companies, in its fight against Obama's regulation.

Bloomberg

https://www.bloomberg.com/news/articles/2017-02-22/e-mails-reveal-epa-chief-s-coordination-with-energy-industry?cmpid=socialflow-twitter-business&utm_content=business&utm_campaign=socialflow-organic&utm_source=twitter&utm_medium=social

E-Mails Reveal EPA Chief's Coordination With Energy Industry

By Jeniffer A Dlouhy 2/22/17

Newly installed EPA Administrator Scott Pruitt closely coordinated with major oil and gas companies, refiners and groups linked to the billionaire Koch brothers to combat environmental regulations during his time as Oklahoma attorney general, according to thousands of pages of e-mails released Wednesday.

The documents, released under court order to the Center for Media and Democracy, a nonprofit watchdog, follow a pitched battle over whether Pruitt should lead the Environmental Protection Agency, culminating in a narrow 52-46 vote Friday to confirm him.

The documents show Pruitt collaborated with the top U.S. refining trade group to mount an attack on annual biofuel quotas in 2013. According to an analysis by the center, the American Fuel and Petrochemical Manufacturers group provided Pruitt with drafted sample language for an Oklahoma petition.

An Oklahoma judge ordered the release of the e-mails on Feb. 16 to the Center for Media and Democracy, which had been seeking the documents since January 2015. Pruitt was narrowly confirmed by the Senate on Friday and sworn in to lead the EPA, the same agency he repeatedly sued while Oklahoma attorney general.

In a July 13, 2013 e-mail, AFPM asks Pruitt to file a petition with the EPA challenging biofuel quotas. "We think it would be most effective for Oklahoma to file a separate waiver petition that emphasizes 'severe environmental harm,' as this argument is more credible coming from a state," an AFPM representative told Pruitt.

A total of 7,564 pages were released by the Center on Wednesday.

"Despite repeated attempts by Pruitt and the Oklahoma AG's office to stonewall CMD and the public, we've won a major breakthrough in obtaining access to public records that shine a light on Pruitt's emails with polluters and their proxies," said Nick Surgey, research director for the Center.

The Oklahoma Attorney General's office said it has gone beyond the requirements of the Open Records Act.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of the Attorney General remains fully committed to the letter and spirit of the Open Records Act," the office said in a statement.

Some of the e-mails illustrate Pruitt's administration's contact with the Oklahoma Council of Public Affairs, a self-described think tank conducting research and analysis of public issues in the state "from a perspective of limited government, individual liberty and a free-market economy."

In 2013, Pruitt's staff solicited then-OCPA President Michael Carnuccio's participation in a "short social media video to highlight his leadership in the Affordable Care Act lawsuit." Carnuccio agreed to make himself available, according to a Dec. 3, 2013 message from one of his staffers.

Bloomberg BNA

<https://www.bna.com/pruitt-prioritizes-sluggish-n57982084174/>

Pruitt Prioritizes Sluggish Superfund Program

2/22/17

Scott Pruitt has said that, if confirmed by the Senate as administrator of the Environmental Protection Agency, he would take on a superfund program struggling to clean up toxic sites efficiently without enough state or federal funding.

The former head of the EPA office that oversees superfund, Mathy Stanislaus, said superfund appropriations have declined over the past four or five budget cycles, creating a backlog of sites awaiting funding.

The cleanup process has slowed as funding declines.

When all cleanup remedies have been installed on a superfund site, the EPA deems it “construction complete.” According to a 2007 investigation by the Center for Public Integrity, the average yearly number of “construction complete” sites at that time was 42.

In fiscal year 2016, there were 11 “construction complete” sites, the agency said.

Pruitt’s Priorities

In response to senators’ questions about environmental cleanup, Pruitt said multiple times that he would make superfund “a priority” if he becomes EPA administrator.

“If confirmed, I would expect to prioritize the cleanup of contaminated land,” he said in written responses to questions from Sen. Cory Booker (D-N.J.), Sen. Kirsten Gillibrand (D-N.Y.) and Sen. Jeff Merkley (D-Ore.).

Booker met with Pruitt before the Oklahoma attorney general’s Jan. 18 U.S. Senate Environment and Public Works Committee hearing.

“Mr. Pruitt said he would advocate for funding for superfund cleanups in the administration’s large infrastructure package. If Mr. Pruitt is confirmed, Sen. Booker will hold him accountable to this commitment,” a spokesperson for Booker’s office said in an e-mail.

Booker was concerned about the Passaic River Superfund Site in his home city, Newark, N.J. The EPA announced a plan in 2016 to remove 3.5 million cubic yards of sediment from the river, according to Booker.

The senator asked Pruitt to commit to carrying out the EPA’s plan for that site efficiently. Pruitt responded that he wasn’t familiar with the site but would seek input from those interested before taking action.

Stronger State Roles

Pruitt indicated at the Senate committee hearing that he would be more deferential to state governments if he becomes head of the EPA. That might be bad news for states facing cleanup challenges at superfund sites, Stanislaus said.

“Superfund takes on the most egregious sites that states need federal assistance on, and the fact is that there’s been a decline in state budgets to handle these kind of sites, so you just can’t delegate that wholly to states,” Stanislaus said.

Neither the states nor the EPA have enough money to assess and clean up sites, so every site is dealt with “sub-optimally,” Stanislaus said.

“The ultimate achievement of a cleaned-up site, and the potential economic benefits of a cleaned-up site, are delayed,” he said.

While he headed the EPA’s Office of Land and Emergency Management from 2009-2017, Stanislaus said states increasingly looked to the EPA for financial help and expertise with National Priorities List sites and immediate risk sites.

"The federal government is a backstop," he said.

Peter deFur, president of the consulting firm Environmental Stewardship Concepts, said states just aren't equipped to take on more superfund responsibilities because many don't have their own superfund laws.

"There are no implementing regulations, no expertise, no people who know the program. The state would have to develop all that and then apply to EPA for delegated status, as in air, water and waste permit programs," he said. "States don't have the system to implement superfund because they don't want it."

Running Dry

DeFur said he has been watching the declining pace of cleanup as funding decreases.

In the late 1990s, funding ran out from a tax on the petroleum and chemical industries. "Orphan" superfund sites, or those where a responsible party hadn't been identified to pay for cleanup, were deeply affected.

"The orphan sites' pace of cleanup just plummeted," deFur said.

Work slows down at sites where cleanups are being conducted by responsible parties because EPA funds and staff time are limited, he said. Less thorough removal options, such as capping buried contamination instead of unearthing it, may be chosen because they are cheaper.

Since the superfund program's operating resources are drawn from congressional appropriations, the operation of the program also changed, he said.

If Pruitt cuts back on EPA staff, leaving an increased workload for remaining employees, deFur said that will be bad news for the program. Myron Ebell, who led Trump's EPA transition team before returning to his job at the Competitive Enterprise Institute, said this week the overall number of EPA employees should be reduced from the current 15,000 to 5,000, though Ebell made clear he wasn't speaking on behalf of the Trump administration.

"It's gonna be a mess," deFur said.

According to a Government Accountability Office [report](#), federal appropriations for superfund have declined from about \$2 billion in 1999.

In fiscal year 2016, Congress provided superfund nearly \$1.1 billion. The agency is under a continuing resolution in fiscal year 2017.

The EPA said the balance of the hazardous substance superfund trust fund was \$188 million as of the end of 2016.

Wall Street Journal

<https://www.wsj.com/articles/auto-makers-ask-epas-pruitt-to-reverse-fuel-economy-emissions-decision-1487738674>

Auto Makers Ask EPAs Pruitt to Reverse Fuel-Economy, Emissions Decision

By Mike Spector 2/22/17, 10:51AM

Auto makers asked the Environmental Protection Agency to undo the Obama administration's decision to lock in future stringent fuel-economy and emissions standards, as the companies seek to take advantage of President Donald Trump's pledge to roll back regulations.

In separate letters sent Tuesday to new EPA Administrator Scott Pruitt, two Washington lobbying groups representing car companies urged the agency to withdraw its "final determination" that future emissions standards remain intact.

The letters, coming on the heels of Mr. Pruitt's Senate confirmation Friday and on his first day greeting EPA staff, signaled the auto industry's resolve to get future mileage and emissions standards relaxed. Ford Motor Co. Chief Executive Mark Fields used a recent White House breakfast with other industry leaders to directly lobby Mr. Trump for relief.

An EPA spokeswoman said the agency was reviewing industry correspondence and declined further comment. Mr. Pruitt, without detailing potential changes, on Tuesday told EPA staff that regulations "ought to make things regular" and companies "we regulate ought to know what they can expect from us." In November, a Trump adviser said the incoming administration would conduct a comprehensive review of regulations, including car emissions and fuel economy rules.

A week before Mr. Trump took office in January, the EPA decided to keep targets that called for auto makers to sell vehicles averaging 54.5 miles a gallon, or roughly 40 mpg in real-world driving, by 2025. The decision capped a review that wasn't expected to be completed until April 2018.

Auto makers contend the targets would be difficult to meet because lower gasoline prices are sending consumers flocking to less-efficient and higher-emitting pickup trucks and sport utilities. When the targets were codified in 2012, prices at the gas pump had soared to record highs.

The electric plug-in cars and hybrids that auto makers contend are needed to meet the standards currently represent a sliver of U.S. sales.

The EPA's decision should be subject to a recent Trump administration regulatory freeze, and the agency should then resume reviewing the standards, according to a letter to Mr. Pruitt from Mitch Bainwol, head of the Alliance of Automobile Manufacturers, a group representing a dozen car companies including Ford, General Motors Co. and Toyota Motor Corp.

For auto makers, the final determination made before Mr. Trump's inauguration "may be the single most important decision the EPA has made in recent history," Mr. Bainwol wrote in the letter, reviewed by The Wall Street Journal. He went on to allege the previous review was "infected" by various shortcomings, including failing to await industry studies and giving companies and the public only 24 days in December to comment on the agency's proposed determination.

In addition, Mr. Bainwol raised concerns that environmental regulators didn't coordinate the decision with the National Highway Traffic Safety Administration, another agency that sets fuel-economy rules. Complying with the current standards would cost the automotive industry \$200 billion even under optimistic EPA estimates, Mr. Bainwol said, and potentially threaten more than a million jobs.

"An action of this magnitude requires a thoughtful and collaborative decision-making process" but the EPA in January "opted for political expediency instead, and jammed through" the final determination, wrote John Bozzella, head of the Association of Global Automakers, another Washington lobbying group representing foreign car makers with U.S. operations.

A decision by the EPA to reopen the midterm review of the emissions standards would likely face challenges from environmental groups long critical of auto makers' efforts to market cleaner cars and trucks.

The midterm review called for the EPA to decide whether to relax, toughen or leave unchanged future emissions targets. Auto makers agreed to the lofty targets in 2011 knowing a viability assessment loomed well before the toughest standards would be enforced.

The EPA released a draft technical report last year predicting car companies would only achieve 50.8 mpg, or about 36 mpg in real-world driving, in 2025 amid current market conditions. But the agency said auto makers have a range of technologies at their disposal to reach more ambitious targets at affordable costs, such as gasoline direct-injection and stop-and-go features.

“EPA has already engaged in an extensive, thorough and lengthy process to evaluate the best technical evidence and found no basis to weaken the standards,” said Roland Hwang, director of the energy and transportation program at the Natural Resources Defense Council, adding that relaxing standards could hurt Americans depending on clean-car technology jobs. “Revisiting the final determination opens up what should be a science-based decision to political meddling.”

New York Times

<https://www.nytimes.com/2017/02/22/us/politics/scott-pruitt-environmental-protection-agency.html>

The Pruitt Emails: E.P.A. Chief Was Arm in Arm With Industry

By Coral Davenport and Eric Lipton 2/22/17, 10:18AM

WASHINGTON — During his tenure as attorney general of Oklahoma, Scott Pruitt, now the Environmental Protection Agency administrator, closely coordinated with major oil and gas producers, electric utilities and political groups with ties to the libertarian billionaire brothers Charles and David Koch to roll back environmental regulations, according to over 6,000 pages of emails made public on Wednesday.

The publication of the correspondence comes just days after Mr. Pruitt was sworn in to run the E.P.A., which is charged with reining in pollution and regulating public health.

“Thank you to your respective bosses and all they are doing to push back against President Obama’s EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states,” said one email sent to Mr. Pruitt and an Oklahoma congressman in August 2013 by Matt Ball, an executive at Americans for Prosperity. That nonprofit group is funded in part by Charles and David Koch, the Kansas business executives who spent much of the last decade combating federal regulations, particularly in the energy sector. “You both work for true champions of freedom and liberty!” the note said.

Mr. Pruitt has been among the most contentious of President Trump’s cabinet nominees. Environmental groups, Democrats in Congress and even current E.P.A. employees have protested his ties to energy companies, his efforts to block and weaken major environmental rules, and his skepticism of the central mission of the federal agency he now leads.

An Oklahoma judge ordered the release of the emails in response to a lawsuit by the Center for Media and Democracy, a liberal watchdog group. Many of the emails are copies of documents previously provided in 2014 to The New York Times, which examined Mr. Pruitt’s interaction with energy industry players that his office also helps regulate.

The companies provided him draft letters to send to federal regulators in an attempt to block federal regulations intended to regulate greenhouse gas emissions from oil and gas wells, ozone air pollution, and chemicals used in fracking, the email correspondence shows.

They held secret meetings to discuss more comprehensive ways to combat the Obama administration’s environmental agenda, and the companies and organizations they funded repeatedly praised Mr. Pruitt and his staff for the assistance he provided in their campaign.

The correspondence points to the tension emerging as Mr. Pruitt is now charged with regulating many of the same companies with which he coordinated closely in his previous position. As attorney general of Oklahoma, Mr. Pruitt took part in 14 lawsuits against major E.P.A. environmental rules, often in coordination with energy companies such as Devon Energy, an Oklahoma oil and gas producer, and American Electric Power, an Ohio-based electric utility.

The emails show that his office corresponded with those companies in efforts to weaken federal environmental regulations — the same rules he will now oversee.

“Please find attached a short white paper with some talking points that you might find useful to cut and paste when encouraging States to file comments on the SSM rule,” wrote Roderick Hastie, a lawyer at Hunton & Williams, a law firm

that represents major utilities, including Southern Company, urging Mr. Pruitt's office to file comments on a proposed E.P.A. rule related to so-called Startup, Shutdown, & Malfunction Emissions.

The most frequent correspondence was with Devon Energy, which has aggressively challenged rules proposed by the E.P.A. and the Department of Interior's Bureau of Land Management, which controls drilling on federal lands — widespread in the west. In the 2014 election cycle, Devon was one of the top contributors to the Republican Attorneys General Association, which Mr. Pruitt led for two years during that period.

In a March 2013 letter to Mr. Pruitt's office, William Whitsitt, then an executive vice president of Devon, referred to a letter his company had drafted for Mr. Pruitt to deliver, on Oklahoma state stationery, to Obama administration officials. Mr. Pruitt, meeting with White House officials, made the case that the rule, which would rein in planet-warming methane emissions, would be harmful to his state's economy. His argument was taken directly from Mr. Whitsitt's draft language.

"To follow up on my conversations with Attorney General Pruitt and you, I believe that a meeting — or perhaps more efficient, a conference call — with OIRA (the OMB Office of Information and Regulatory Analysis) on the BLM rule should be requested right away," Mr. Whitsitt wrote. "The attached draft letter (or something like it that Scott is comfortable talking from and sending to the acting director to whom the letter is addressed) could be the basis for the meeting or call."

The letter referred to the section of the White House Office of Management and Budget that coordinates regulations throughout the government.

Senate Democrats last week unsuccessfully urged their colleagues to delay a vote on Mr. Pruitt's confirmation until the emails were released.

The emails do not appear to include any request for his intervention explicitly in exchange for campaign contributions, although Mr. Pruitt was separately working as a member of the Republican Attorneys General Association to raise money from many of the same companies.

Despite the large volume of correspondence between Mr. Pruitt's office and the industry players, the emails are unlikely to cause Mr. Pruitt significant new problems. They do expand on email exchanges or topics that previously had been disclosed.

The Oklahoma Attorney General's office has withheld some documents, asking the judge to determine if they can be exempted from the order requiring their release. There are also other pending open-records requests, from the Center for Media and Democracy, The Times and other news organizations.

Mother Jones

<http://www.motherjones.com/environment/2017/02/donald-trump-scott-pruitt-epa-employee-resist>

"We Will Never Stop": An EPA Employee Blasts the Trump Administration

By Eric Holthaus 2/22/17, 11:00AM

As we embark on month two of Donald Trump's presidency, it's hard to imagine a group of federal employees facing more uncertainty than the staff of the Environmental Protection Agency. Industry ally and new EPA Administrator Scott Pruitt can be viewed only as an agent of profound change, and he's already faced intense opposition from Senate Democrats and from the staff he inherits.

In recent days, both *Bloomberg* and the *Washington Post* have reported that the first moves Trump and Pruitt will make in their overhaul of US environmental policy will be to roll back parts of Barack Obama's climate legacy and the "Waters of the US" rule—a thorn in the side of farmers and ranchers. This comes as no surprise—both of these policies were identified at the top of the administration's "America First Energy Plan" agenda the moment the White House website switched over on inauguration day.

After his hostile nomination process, Pruitt made an appeal to civility Tuesday in his first address to EPA staff. "We as an agency and we as a nation can be both pro-energy and jobs and pro-environment," he said. "We don't have to choose between the two." That message may ring a bit hollow to the agency's staff, however—coming from a person who has dedicated his career to dismantling environmental safeguards. We appear to be entering an era in which environmental protection will officially be seen as an impediment to the will of industry. For EPA staffers who have devoted their lives and careers to preserving the planet, this is a heartbreaking development.

Shortly after the inauguration, a career EPA employee contacted me through a secure chat program and began to express profound concern over the threat now posed to their life's work. What follows is a heartfelt essay that this official—who requested anonymity out of fear of retribution by the administration—wrote shortly after Pruitt's confirmation last week:

I am a proud employee of the EPA. My colleagues and I are passionate about protecting the health of the American people—and the natural environment we share—from harmful pollution, chemicals, and pesticides. Many of us fear that the American people believe politicians when they say our agency is full of "lazy bureaucrats." The reality is we all got into this work because we believe that it is our duty to protect people and the planet we live on for future generations. EPA is a public health agency, and we come to work every day focused on how we can better serve the American people and enable everyone, regardless of income, race, or any other factor, to enjoy equal protection and access to a healthy environment so everyone can prosper and enjoy the opportunities this country has to offer.

We are not against industry or economic prosperity; we want to work toward a society that cherishes people, the planet, and the economy—all at the same time.

When the EPA was established in 1970, by a Republican administration, the idea of a healthy environment was not a partisan issue. But since then, we have moved into an era where politicians and corporations started working to convince the American public that protecting their water, land, and air from harmful pollution was not in the people's best interests and that our economy can't be prosperous if our environment and public health is protected at the same time; this is a lie. What is true is that polluters don't want to be held accountable for their actions. But when will our leaders see that people matter as well? The attitude that powerful polluters should be able to operate unchecked, no matter how many people are hurt, is the same all over the world.

What type of nation are we when we allow our leaders to sign into law a rule that makes it EASIER for mining companies to pollute local waterways? These same politicians will try to convince their voters that making it easier to pollute local streams is somehow good for them. Communities in West Virginia, Indiana, and Alabama with sky-high rates of cancer due to industry pollution shouldn't be presented with the false choice of accepting even more poison in their local environment or having a job. No one should be told that they have to put up with cancer-causing poison in their water, air, and land. It's shameful, and it's wrong.

We at EPA believe that everyone should be able to breathe clean air, drink clean water, have healthy food, AND ALSO have a growing economy. Those that want to weaken EPA will say, "Well, the states can do it themselves." EPA has always worked closely with states and respects jurisdictional power, but rivers and air don't stop at state borders, and every American—no matter where they live—deserves to have a basic standard of protection.

You have to ask yourself: Who benefits when the EPA is weakened? Who benefits when our staff is laid off, cast aside, and when the agency is prevented from pursuing its mission of protecting public health and the environment? Who benefits when the agency can't consistently enforce environmental laws that are meant to protect the public? The beneficiaries are not the people. Environmental protection is not a partisan issue. Science is not partisan. We all share this earth and its resources on which we all depend to survive. The amount of money you have should not determine if you get to live a healthy life, free from pollution. The politicization of this issue is manipulation by those who are already powerful. We, EPA professionals, have dedicated our lives to this work because we care about people more than we care about money or even being recognized for what we do.

2015 was the deadliest year on record for people working to defend and protect the environment. Let that sink in. One hundred and eighty-five human beings were killed around the world (more than three for every week of 2015) because they dedicated their lives to protecting human health from pollution and preserving the beautiful planet we all cherish. The same year, the Environmental Protection Agency welcomed Berta Cáceres, along with the other winners of the Goldman Environmental Prize, to honor them for being global leaders in defense of human rights and environmental protection. Less than one year later, Ms. Cáceres would be murdered in her home in Honduras because she was brave enough to challenge mining and dam-building corporations. She defended human rights and the environment, and her life was taken because of it.

Here in the US, those of us who work to protect the environment and human health from corporate pollution are lucky enough that we do not live under the specter of murder. We are, however, acutely aware that the forces behind these heinous crimes against environmental activists abroad are the same forces that are working against us in the US today. And make no mistake: These forces are poised to grow even stronger.

If it is discovered in the next few weeks that the EPA Administrator does in fact have even closer ties to polluting corporate interests than we feared, what will the public do? Will the capture of EPA by corporate interests be swept up in all the other horrifying news of the day or week? Or will the public finally decide that it is not acceptable to allow EPA, the only agency with a mission dedicated to protecting the environment, to be systematically dismantled, allowing those

at the top to further concentrate wealth and power among themselves? Despite the long odds we face, we will never stop working to protect every person's right to have a healthy place to live, work, and play. And if the new administrator casts me out of the job I love, I will not stop working toward the principles that have always animated my life. This is who I am, and that will never change. I stand in solidarity with brothers and sisters that work to protect human rights, human health, and the environment here in the US and all over the world. The struggle continues.

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=105973923&vname=denotallissues&wsn=498738000&searchid=29411995&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0

White House Vetting Pruitt Choices for EPA Leadership: Adviser

By Brian Dabbs 2/22/17

The White House is collaborating with newly minted EPA administrator Scott Pruitt to vet candidates for the agency's leadership team, but the speed of confirmations is largely up to a Senate already dogged by intransigence, a top White House adviser said Feb. 21.

"Those decisions are made by the secretary, and in this case the administrator, and the president, and they make them jointly from what I've seen," Don Benton, a senior White House adviser on the agency, told reporters after Pruitt's inaugural speech to EPA staff.

"The president understands that when he puts an executive in charge of something they need to be able to bring the people in that they need to get the job done," Benton, a Republican state senator from Washington, said.

Pruitt took the reins of the Environmental Protection Agency Feb. 17 following a contentious and drawn-out confirmation process. Acting deputies and assistant administrators currently fill the ranks of the highest levels of the agency, led by Acting Deputy EPA Administrator Mike Flynn. Democrats in the Senate are continuing to stall nominees amid an unprecedented pushback on the newly elected president's Cabinet.

President Donald Trump reportedly rejected Secretary of State Rex Tillerson's pick for deputy, Elliott Abrams, in recent days, but Benton dismissed the prospect of a leadership selection row at the EPA.

Processing Names

"I don't expect we'll have any trouble," he told reporters. "We're ready to go. Scott has in mind the people that he needs to help him, and we've already begun to process some of those names through the White House."

Various news accounts have mentioned Donald van der Vaart, former secretary of North Carolina's Department of Environmental Quality, and Andrew Wheeler, a former aide to Sen. Jim Inhofe (R-Okla.), as potential Pruitt deputies.

A spokesman for the Senate Environment and Public Works Committee, the panel tasked with processing the EPA staff, said he couldn't immediately respond to a Bloomberg BNA request for comment. Lisa Jackson, the first EPA administrator under former President Barack Obama, didn't land a Senate-confirmed deputy administrator, Bob Perciasepe, until December of the president's first year in office.

The Senate confirmed Jackson three days after Obama's inauguration in 2009 while Pruitt has had to wait a month.

Benton lauded the Pruitt speech, saying the new administrator rightly stressed the need to balance environmental safeguards and industry growth. Pruitt focused on cooperative federalism and reining in EPA overreach.

"Process matters, and we should respect that and focus upon that, and try to avoid, not try to avoid but do avoid, abuses that occur sometimes," Pruitt told a crowd of several dozen EPA employees. "I believe we as an agency and we as a nation can be both pro-energy and jobs and pro-environment, that we don't have to choose between the two."

As attorney general for Oklahoma, Pruitt sued the EPA over a range of regulations, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards for power plants and methane limits for the oil and natural gas industry.

Politico Pro

<https://www.politicopro.com/energy/whiteboard/2017/02/group-releases-7-500-pages-of-pruitt-emails-084006>

Group releases 7,500 pages of Pruitt emails

By Alex Guillen 2/22/17, 9:52AM

1. The watchdog group Center for Media and Democracy today released more than 7,500 pages of emails from the Oklahoma attorney general's office during Scott Pruitt's tenure. CMD says the batch of emails includes communications showing cooperation between Pruitt's office and American Fuel & Petrochemical Manufacturers on the Renewable Fuel Standard and the ozone standard, as well as further connections with Devon Energy, a relationship that was first reported by The New York Times in 2014.

A state judge last week said Pruitt had wrongly delayed releasing the emails, which were requested by CMD more than two years ago. Mike Hunter, who replaced Pruitt as attorney general on Monday, complied with the order to release the emails to CMD by yesterday. He is also required to turn over by Monday more emails connected to a half-dozen more CMD requests made over the past two years.

E&E News

<http://www.eenews.net/energywire/2017/02/22/stories/1060050390>

Emails hang over Pruitt message to EPA staff

By Joel Kirkland and Mike Lee 2/22/17

Staff from the Oklahoma attorney general's office began turning over thousands of documents related to U.S. EPA Administrator Scott Pruitt's contacts with oil, gas and coal groups during his tenure as the state's top lawyer.

Last night, by court order, the Center for Media and Democracy received a disc with 7,500 pages of emails and public documents that it has been requesting from Pruitt's office for two years.

The liberal-leaning watchdog requested the information two years ago and sued to gain access to the records in part to force a response before the Senate confirmed Pruitt to EPA's top job. Oklahoma District Judge Aletia Haynes Timmons on Thursday ordered the attorney general's office to release the documents. The Republican-led Senate confirmed Pruitt on Friday after Democrats held the Senate floor all night in the hope of bringing public pressure to bear against Pruitt's nomination (*Energywire*, Feb. 17).

Pruitt served as Oklahoma's attorney general from 2011 until this month and developed a reputation as a champion of the fossil fuel industry. *The New York Times* reported in 2014 that Pruitt used language from oil and gas companies in letters and legal briefs challenging the Obama administration's environmental regulations.

Before becoming President Trump's EPA administrator, Pruitt organized efforts by attorneys general and oil, gas and coal companies aiming to stop Obama-era rules. Some of their lawsuits against EPA failed to overturn regulations, but Pruitt and other Republican attorney generals won a Supreme Court stay on President Obama's signature rule for addressing greenhouse gas emissions from existing power plants, the Clean Power Plan.

The pursuit of the records overshadowed Pruitt's first days in office and highlighted his work promoting the energy industry and individual states' prerogatives in enforcing environmental laws. In his first public remarks to the EPA staff,

Pruitt suggested those themes would be part of the Trump administration's approach to regulating greenhouse gases, air quality and water quality.

"Regulators exist to give certainty to those they regulate," he said in remarks to EPA's 15,000 employees nationwide. "Those that we regulate ought to know what's expected of them so they can plan and allocate resources to comply."

Without explicitly denouncing Obama's approach to regulating energy companies, Pruitt indicated a broad shift away from Obama's use of the federal agency to force reductions in auto, oil field and power plant emissions.

"Federalism matters," Pruitt said. "I seek to ensure that we engender the trust of those at the state level, that those at the state level see us as partners in this very important mission we have as an agency, and not adversaries."

Clean Power Plan

Pruitt's comments came on the heels of reports that Trump plans to issue an executive order this week to start the process of rescinding the Clean Power Plan. The CPP, which is on hold until federal courts rule on pending litigation, is the agency's signature climate regulation targeting carbon emissions from power plants.

Critics of the rule accused EPA of misinterpreting the Clean Air Act and running roughshod over states that rely on coal for electricity. Its supporters say EPA's finding that carbon dioxide is a pollutant compels the agency to act in the public interest, and they say state-led plans were the centerpiece of the regulation.

To back out of the Clean Power Plan, Pruitt's starting point is at the U.S. Court of Appeals for the District of Columbia Circuit, where litigation is pending. He could request the court pause before ruling on legal challenges against the carbon rule, according to analysts, alerting the court of EPA's intentions to rewrite the regulation.

Anything he does is expected to trigger a reaction from states that support the rule.

In late December, 14 attorneys general, including from New York, California, Virginia, Oregon and Illinois, signed a letter to then-President-elect Trump urging him to continue defending the Clean Power Plan.

"The Clean Power Plan builds on successful strategies that states, local governments and the power sector have used to cost effectively cut greenhouse gas emissions from power plants, while at the same time creating jobs and growing our economies," the letter stated.

But the letter also responded to a push by states primarily in the South and Midwest to get Trump to unravel the Clean Power Plan.

"If the challengers are so confident in their oft-repeated claim that the Clean Power Plan is 'unlawful,' why not let the court decide the claims that they themselves brought?" said the attorneys general, led by New York Attorney General Eric Schneiderman (D).

A spokesman for the Sierra Club said to expect a "proportionate response" to an executive order directing EPA to dismantle the carbon regulation — from environmental groups, public health advocates and states in the Northeast and West supporting the federal effort to combat climate change.

E&E News

<http://www.eenews.net/climatewire/2017/02/22/stories/1060050392>

Staff wary but ready to work with Pruitt amid new email dump

By Emily Holden, Niina Heikkinen and Hannah Hess

Newly appointed U.S. EPA Administrator Scott Pruitt yesterday tried to extend an olive branch to worried staffers hours before consenting to a judge's order and releasing more than 7,000 pages of emails with energy firms.

By late yesterday evening, advocates with the Wisconsin-based Center for Media and Democracy were combing through the email correspondence between Pruitt and his top staff in the Oklahoma attorney general's office and coal, oil and natural gas companies. The group intends to publish the emails online by 9:30 am today.

In an emailed statement, a spokesman for the Oklahoma attorney general's office said the office had gone "above and beyond" the requirements of Oklahoma's open records law.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of Attorney General remains fully committed to the letter and spirit of the Open Records Act," spokesman Lincoln Ferguson said.

The Center for Media and Democracy had pursued the documents for two years. Last week, Oklahoma County District Judge Aletia Haynes Timmons ruled that Pruitt had failed to follow the state's open records laws, and required him to produce emails relating to one of the outstanding requests by close of business yesterday.

Senate Democrats and environmental groups had demanded the emails' release prior to Pruitt's confirmation last week but failed to convince Republicans. Yet any hint of an email scandal was absent from Pruitt's first public address yesterday to employees at EPA headquarters in Washington, D.C.

Holding up an EPA cap, Pruitt told employees he wants to help them do their work and argued for "civility" in a "toxic" political environment.

"I seek to be a good listener," Pruitt said, commending career staffers for their dedication and contending that media reports about him might not paint a fair picture.

But Pruitt's tone pivoted sharply from EPA's core message in recent years. Where former EPA chief Gina McCarthy focused most of her speeches on the agency's work to improve public health, Pruitt instead highlighted the importance of abiding by congressional intent and providing regulatory certainty to businesses.

"Regulations ought to make things regular," Pruitt said. "Regulators exist to give certainty to those that they regulate. Those that we regulate ought to know what's expected of them so they can plan and allocate resources to comply."

Pruitt said EPA should avoid "abuses that occur sometimes" in the regulatory process. He called out the agency practices of regulating through guidance rather than an official rulemaking, or writing rules in response to litigation from environmental groups.

"We need to be open and transparent and objective in how we do rulemaking and make sure we follow the letter of the law as we do so," he said.

Employees taking a wait-and-see approach

Pruitt plans to work to roll back many of the Obama administration's signature environmental achievements, including a rule to reduce greenhouse gas emissions from power plants. An executive order on that rule, called the Clean Power Plan, could come as early as this week, although more binding efforts to undo it will take longer and face lawsuits (*Climatewire*, Feb. 21).

The new administrator wants to narrow the scope of EPA's work, and employees have voiced concerns about staffing and budget cuts and reorganizations that might prevent them from fulfilling their obligation to protect the environment.

EPA staffers filing out of their Washington headquarters yesterday said they were still concerned but would wait to see how their new boss worked.

One EPA employee said he would "give him a chance."

"I don't like to prejudge anybody," he said.

That employee added that he thought Pruitt's speech was "kind of vanilla." He said that while it makes sense that Pruitt would emphasize a need to adhere to the law, he added, "Let's hope we stick to that."

Another employee said he saw the potential for a positive working relationship with the new administrator.

"He thinks that you can still save the environment yet have economic growth, which sounds good. I think he's a personable guy; I kind of like him. I look forward to working with him," said one EPA employee in the Office of Water.

Jeff Holmstead, a former assistant administrator at EPA under George W. Bush, said Pruitt "certainly understands he's coming in with some controversy."

"I think this is the first step of his effort to reach out and make sure people understand who he is and know he's open to addressing their concerns," Holmstead said, adding Pruitt "didn't pull any punches" or make promises that he couldn't keep about EPA's budget, which the president and Congress will ultimately decide. Many agency staffers will be waiting to see the budget, Holmstead said.

Greens blast speech

Bill Becker, executive director of the National Association of Clean Air Agencies, said Pruitt's case for ensuring that the agency abides by the law, adheres to process and works closely with states "sounds awfully similar to previous administrations &mdash and I say that really as a compliment."

But a national environmental program for cutting pollution won't succeed at the state and local level without a strong and effective EPA, he warned. The possibility of significant cuts to EPA's budget or slashing the agency's 15,000-person staff to about 5,000 employees, as transition team chief Myron Ebell has suggested, threatens that (*Greenwire*, Jan. 26).

If Pruitt's first acts are to rescind regulatory programs on which many states relied without seeking a substitute, Becker said, it might cause a rocky start.

"We welcome delegation of authority, but not without financial and regulatory help, and not without the important backstop of EPA," Becker said.

Becker concluded, "These are laudable principles. No one can argue about any of those principles. No one should argue about any of those principles. But it's how they are carried out that matters."

Environmentalists quickly condemned Pruitt for not focusing his speech more on environmental and public health issues.

"My immediate reaction was that in his first address to EPA, he didn't talk about environmental protection at all. It was completely absent of any mention of protecting clean water, air and land. No mention of climate change, which is obviously a critical challenge of our time," said Nick Conger, press secretary for the Natural Resources Defense Fund and former communications adviser to the EPA administrator's office during the Obama administration.

Conger noted that Pruitt also did not focus on regional engagement and did not take questions from staff members, something his former boss, McCarthy, used to do during each of her all-hands meetings as EPA administrator.

"I'm just very struck that it seems his focus is on protecting industry and economic impacts, market impacts, at the exclusion, almost, if not entirely at the exclusion, of public health protection. That's what EPA is there to do, protect public health," he said.

'Hell to pay' if climate regs repealed?

Catherine McCabe, who was acting administrator until Pruitt's confirmation, touted her new boss's work to achieve a water rights settlement among the state of Oklahoma, cities and tribal nations.

Pruitt instead spoke about his vision for making regulations simpler for industry.

While he didn't mention the Clean Power Plan directly, he said he believes the agency can be "both pro-energy and jobs and pro-environment."

"We don't have to choose between the two," he said.

Industry groups challenging EPA's regulation of carbon dioxide under the Clean Air Act seem wary of going too far in contesting climate rules.

A senior official at the U.S. Chamber of Commerce's Institute for 21st Century Energy recently said there would be "hell to pay" if the Trump administration tries to repeal EPA's 2009 endangerment finding.

"And if you are going to go out there and say, 'We're going to pull this back,' I mean there is going to be hell to pay, not just from those people out there who are protesting those plants," Senior Vice President for Policy Christopher Guith said last month at an event in Kentucky, according to a [transcript](#) published by the Energy and Policy Institute, a watchdog organization backing renewables.

"There's going to be hell to pay from, you know, soccer moms and soccer dads all throughout the country. People who probably voted for Donald Trump," Guith said.

Matt Letourneau, a spokesman for the institute, said Guith's answer "was based on a political analysis of the situation," not an official policy position.

E&E News

<http://www.eenews.net/climatewire/2017/02/22/stories/1060050394>

Automakers ask Pruitt to revisit Obama's emissions rules

By Camille von Kaenel 2/22/17

Automakers have asked new U.S. EPA Administrator Scott Pruitt to reverse an Obama-era decision to lock in vehicle emissions standards through 2025.

The Alliance of Automobile Manufacturers wants EPA to reopen an official review of fuel economy rules, which it says were rushed during the final days of the Obama administration to cement the former president's climate legacy.

EPA had until April 2018 to decide whether to tighten, loosen or simply maintain the emissions standards. Instead, it finalized its decision on Jan. 13 — days before President Trump's inauguration.

The auto industry group's president and CEO, Mitch Bainwol, asked Pruitt to withdraw that decision yesterday in a letter, calling it "the product of egregious procedural and substantive defects" and "riddled with indefensible assumptions, inadequate analysis and a failure to engage with contrary evidence."

EPA's decision to keep the standards unchanged followed a technical report in the summer that found that automakers could continue to meet and exceed the standards with available or impending technologies, though Americans' changing preferences for bigger vehicles would slightly mitigate the overall greenhouse gas benefits of the program.

Bainwol wrote that he is not asking for a different final decision "at this time" but wants more time for the agency to consider additional studies the trade lobby is conducting on the feasibility of the standards. The decision was not published in the *Federal Register* because it was not a new rule and so is not subject to a regulatory freeze.

Automakers agreed to the standards in 2012 on the condition of the midterm review. The emissions standards would bring average fleetwide fuel economy to 50.8 mpg in 2025. The letter by the trade lobby follows a similar request by automaker CEOs directly to President Trump to soften, if not eliminate, the rules.

Bainwol also said he is concerned about discrepancies between the agencies that set the rules: EPA and the National Highway Traffic Safety Administration. NHTSA, which must issue a separate rule for the 2022-25 standards, has not yet completed its midterm review. Before Trump took office, it agreed to consider long-standing requests by automakers to tweak the standards.

Environmental and national security advocates have warned that any change to the fuel economy standards would have to surmount legal challenges and could create greater uncertainty for automakers.

The Hill

<http://thehill.com/policy/energy-environment/320590-group-releases-emails-from-new-epa-chief>

Group releases emails from new EPA chief

By Devin Henry 2/22/17 9:36 AM EST

An open-government group has released a batch of emails from Environmental Protection Agency Administrator Scott Pruitt's tenure as Oklahoma attorney general.

The Center for Media and Democracy (CMD) released nearly 1,500 pages of emails on Wednesday morning, one day after Pruitt's former office turned them over to a state court in Oklahoma. The group said it received 7,564 pages of emails from Pruitt's office overall.

The court had ordered Pruitt's office to release the documents last week after CMD sued, seeking a response to an Open Records Act data request it had sent years earlier.

That court order came days before the Senate voted to confirm Pruitt to his post at the EPA.

Senate Democrats — all but two of whom voted against Pruitt's nomination — insisted the vote be delayed until after the emails were released. Pruitt said the emails could show close ties between his office and the Oklahoma fossil fuel industry, a sector that he defended during his tenure as the state's attorney general.

Pruitt was sworn in as EPA administrator on Friday and he addressed the agency for the first time on Tuesday.

AP

http://hosted.ap.org/dynamic/stories/U/US_OPEN_RECORDS_LAWSUIT_PRUITT?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

EPA head's emails with energy companies to be released

By Tim Talley 2/21/17

OKLAHOMA CITY (AP) -- The Oklahoma attorney general's office said Tuesday it is complying with a judge's order to surrender documents related to new Environmental Protection Agency leader Scott Pruitt's communications with energy companies while he served as the state's attorney general.

The office had until 5 p.m. Tuesday to comply with District Judge Aletia Haynes Timmons's order to turn over emails and other documents to the Wisconsin-based Center for Media and Democracy, which requested the documents more than two years ago under Oklahoma's Open Records Act.

A spokesman for the office, Lincoln Ferguson, said it turned over records related to the January 2015 request to the watchdog agency and that other records were turned over to the judge to determine if they are privileged and not subject to release under the law.

"The office went above and beyond what is required under the Open Records Act and produced thousands of additional documents that, but for the court's order, would typically be considered records outside the scope of the act," Ferguson said in an emailed statement.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the office of attorney general remains fully committed to the letter and spirit of the Open Records Act," Ferguson said.

An attorney for the advocacy group, Bob Nelon, said he received an email from the attorney general's office at 4:14 p.m. Tuesday indicating that it planned to comply with the judge's order and make the documents available.

Nelon said the records were provided electronically and that an initial review indicated one computer disk contained 7,564 pages, although it was not immediately clear how many documents they represent.

The attorney general's office had previously identified more than 3,000 emails that it said pertained to the group's January 2015 request.

Nelon said the records will be transmitted to the Center for Media and Democracy, which plans to make them publicly available on its website.

Timmons has also ordered the attorney general to comply with other open-records requests by the group in 2015 and 2016.

The judge handed down her ruling on Thursday in connection with a lawsuit the group filed that accused the attorney general's office of failing to provide "prompt and reasonable access" to the documents, as required by the Open Records Act.

Pruitt resigned his post as Oklahoma attorney general on Friday, the day he was sworn in as President Donald Trump's EPA administrator.

Among other things, the January 2015 request sought information about Pruitt's communications, private meetings and relationships with fossil fuel companies as the state's attorney general, companies he will help regulate as EPA administrator.

Nelon said later requests were more narrowly tailored and that the advocacy group has no idea how many documents are involved.

As Oklahoma's attorney general, Pruitt repeatedly sued the EPA and criticized what he has characterized as the EPA's "activist agenda." He has been a reliable booster of the fossil fuel industry and has said his support for legal positions advocated by oil and gas companies was in the best interest of Oklahoma, which is economically dependent on the fossil fuel industry.

In his first meeting with the EPA's staff Tuesday, Pruitt said he believes the nation can be "pro-energy and jobs, and pro-environment."

"I think our nation has done better than any nation in the world at making sure that we do the job of protecting our natural resources, and protecting our environment, while also respecting economic growth," Pruitt said.

Inside Climate News

<https://insideclimatenews.org/news/21022017/pruitt-enters-epa-conciliatory-words-staff-braces-divisive-action>

Pruitt Enters EPA with Conciliatory Words, but Staff Braces for Steep Cuts

By Marianne Lavelle 2/21/17

Scott Pruitt, who spent the past six years as the Environmental Protection Agency's courtroom antagonist, took the helm of the agency Tuesday with a pledge to listen to agency staff and tackle tough problems cooperatively.

"We ought to be able to get together and wrestle through some difficult issues in a civil manner," said Pruitt in an address to EPA employees, who are bracing for deep budget cuts and a retreat from the goal of addressing climate change.

Pruitt didn't talk about policy specifics. Instead, he laid out a vision for an EPA that could avoid litigation in the future by limiting the agency's ambitions under the mandates that Congress gave it and sticking to "process."

But environmental advocates already were preparing a vigorous legal defense of regulations they fear could be undone. They maintain the rules were subject to a rigorous public comment and debate, as well as court review.

With the Trump White House expected as soon as this week to issue executive orders to roll back the Clean Power Plan, President Obama's signature climate initiative, and other EPA regulations, David Doniger, climate programs director of the Natural Resources Defense Council, responded on Twitter:

Pruitt's address to the agency came on the first full federal workday since his contentious confirmation process ended Friday with a largely partisan 52-46 vote of approval.

"This environment that we live in today is a very toxic environment," Pruitt said. "We have jerseys that we put on, and that is something that I think is damaging to the overall objective of finding the results and answers."

But Pruitt, the former Oklahoma attorney general, is likely to continue to be dogged by the same issues that have been raised since his nomination by Trump in December. On the same day as his official welcome at EPA, about 2,000 of his emails with fossil fuel companies and organizations were to be released in Oklahoma after years of delay.

Pruitt suggested that EPA staff may have gotten an incomplete picture of him from reading news reports. "I look forward to sharing the rest of the story with you," he said. "I seek to listen, learn and lead with you, to address these issues that we face as a nation."

While stressing civility and cooperation, Pruitt returned to the arguments he made against the EPA both in court and before the Senate.

"Process matters," said Pruitt. "Regulations are to make things regular, to give certainty to those who are regulated, so they know what's expected of them and can allocate resources so that they can comply."

"The process we engage in is very important. It sends a message that we take seriously our role of taking comment and offering a response, and in making informed decisions on how it's going to impact those in the marketplace to achieve the ends we have in statute," he said. "We should avoid abuses...like engaging in regulation through litigation, consent decrees that bypass the Administrative Procedure Act."

Pruitt's view echoes the complaints of industry lobbyists who have decried EPA's settlement of a number of lawsuits brought by environmental groups during the Obama administration. Under these agreements, the EPA finalized

regulations to control mercury from power plants, address air quality issues due to ozone, clean up the Chesapeake Bay and regulate greenhouse gases.

Critics say the consent agreements are a kind of collusion between the EPA and environmentalists. Environmental groups, however, argue that their litigation followed years of effort and wrangling with the agency. (The Government Accountability Office found little impact on EPA policy due to the deadlines imposed by consent decree.) In 2014, the U.S. Supreme Court rejected an effort by Pruitt and other litigants to overturn a settlement with several states and environmental groups under which the EPA agreed to regulate greenhouse gases.

"EPA already has SO MUCH PROCESS," Jack Lienke of the Institute for Policy Integrity at the New York University School of Law, said on Twitter. "Clean Power Plan was in the works for > FOUR YEARS before finalization."

In his remarks on Tuesday, Pruitt also reprised the argument he often made in more than 14 lawsuits against the EPA—that it had overreached its legal authority. "The rule of law: the only authority any agency has is given to it by Congress," Pruitt said. "Sometimes that authority is broadly stated, and other times Congress is very restrictive, and it's been very specific about what they agency can and can't do."

"We need to respect that. When we do that, here's what happens: We avoid litigation, and we reach better outcomes."

But the Supreme Court, in its landmark Massachusetts v. EPA decision, ruled that, "Because greenhouse gases fit well within the Act's capacious definition of 'air pollutant,' EPA has statutory authority to regulate emission of such gases."

The court said that "EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. It has refused to do so, offering instead a laundry list of reasons not to regulate."

And courts have rejected Pruitt's argument that EPA exceeded its authority in other cases, such as the Obama administration's cross-border pollution and mercury pollution regulations for power plants.

Other legal challenges, however, have yet to be decided, including a case now pending in a federal appeals court on the Clean Power Plan. The Supreme Court has issued a stay on putting the rule into effect.

Pruitt did not mention climate change, but said, "We as a nation can be pro-energy and jobs and pro-environment."

Environmental advocates quickly took issue with the picture of the agency painted by Pruitt. Lienke tweeted that statistics show EPA has been balancing economic growth and environmental protection all along. He cited a 68 percent reduction in the most common air pollutants from 1970 and 2013, as GDP tripled and the U.S. population grew by 54 percent.

Although all EPA staff were invited to attend, there was only room for about 100 in the high-ceilinged ceremonial room next to the administrator's office, the Rachel L. Carson Great Hall; the agency's 15,000 employees could watch remotely. The crowd in the room included some of the agency's first political appointees, including the transition leader, former Washington State Sen. Don Benton.

Benton said after the speech he thought that Pruitt had struck "a perfect balance" in his speech. "He's very much in partnership mode," he said.

Brett Hartl, government affairs director of the Center for Biological Diversity, said he thought that although Pruitt's comments about the rule of law and process "sound good," his record indicates he will be taking the agency in a dramatically different direction. "His agenda is straightforward. He wants to undercut the agency," said Hartl. "He's going to be the guy who cuts their staff and their budget, and makes employees do useless things so they can't do enforcement."

"Condescending and Hypocritical": An EPA Staffer Blasts Scott Pruitt's First Speech

By Rebecca Leber 2/22/17, 4:43PM

Scott Pruitt may have wanted to ease Environmental Protection Agency staffers' concerns about him Tuesday, but his first remarks as head of the agency hardly mentioned environmental protection at all.

With Donald Trump's EPA transition staff sitting nearby, Pruitt delivered an 11-minute speech, in which he declared, "We as an agency and we as a nation can be both pro-energy and jobs and pro-environment." He also quoted famed conservationist John Muir: "Everyone needs beauty as well as bread, places to pray in and play in." Pruitt did lament the "toxic environment" in the country, but it was a reference to the political climate—part of a call for a more civil discourse.

The former Oklahoma attorney general never dwelled on the specifics of his or the White House's agenda for the EPA in the short address, which featured introductory remarks by recent acting administrator Catherine McCabe. Neither McCabe nor Pruitt mentioned the elephant in the room: the EPA's regulations on climate change and Pruitt's role in suing the agency for its climate work.

"I know it's very difficult to capture in one speech the vision and direction of an agency," Pruitt said, while outlining a few of his core guiding principles for the new EPA. He said he wants to limit the scope of the agency's regulatory work and ensure stability for industry. "Regulations ought to make things regular," Pruitt said. "Regulators exist to give certainty to those they regulate...Process matters and we should respect that and focus on that, and try to avoid, do avoid, abuses that occur sometimes."

Pruitt mentioned the need to follow "rule of law" and respect states' roles in enforcing environmental standards. "Congress has provided a very robust, important role of the states," Pruitt said. (Environmentalists, of course, are quick to point out that states are not always eager or financially equipped to protect air, water, or the climate on their own.)

If Pruitt's address was meant to soothe staffers' concerns about their incoming administrator, they may have come up short.

"Pruitt's talk [was] as bad as expected," said a current career EPA staffer of over 20 years, who requested anonymity, following the speech. "Not one word about public health. And talking about the rule of law as if we didn't do EVERYTHING with the realization that it WILL end up in court. It was condescending and hypocritical."

Some former EPA officials shared that view. "Trump's team spent the entire campaign and the last few months railing against EPA's existence, its staff, and its purpose," Liz Purchia, an Obama-era communications staffer at the agency, said in an email. "Accomplishing agency priorities was no easy task when the administrator had staff's back and political and careers agreed the majority of the time, so let's see how well Trump's EPA does getting staff to follow them when they feel disrespected. These are professionals with years of experience, who have been made to feel like their leader doesn't trust their judgment. The American people are relying on them to defend the agency, protect its environmental statutes and stand up to Trump's team to ensure they uphold science and the law."

Going by the EPA's press releases over the weekend, the agency now views industry and conservatives as its real constituency. No public health groups, environmentalists, or scientists appeared on the laundry list of "stakeholder" congratulations circulated by the EPA after Pruitt was sworn in.

Outside the EPA on Tuesday, an administration official echoed Pruitt's pledge that he will listen to career staff. "He's a very good listener," Don Benton, a White House senior adviser, told reporters after the address. "I don't expect him to be making any quick decisions."

Benton didn't answer specifics on the timing of the presidential actions, saying that the matter is between Pruitt and Trump. But a slow transition based on input from current EPA staff isn't what news reports—nor Pruitt's own words—have suggested. Various news outlets have reported that the White House intends to roll out a series of presidential actions targeting the EPA as early as this week.

Pruitt didn't provide much clarity Tuesday on what comes first. But in an interview with a conservative *Wall Street Journal* columnist last week, Pruitt appeared to reverse himself on one key issue. At his confirmation hearing in January, he said that the EPA's official finding that climate change poses a health danger and is therefore subject to the Clean Air Act "needs to be enforced and respected." But according to the *Journal*, Pruitt now wants to conduct a "very careful review" of whether the agency can do anything at all about global warming. His remarks Tuesday appear to have done little to persuade his critics that such a review would be based on sound science.

Morning Consult

<https://morningconsult.com/2017/02/21/no-mention-climate-pruitts-address-epa-employees/>

No Mention of Climate in Pruitt's Address to EPA Employees

By Jack Fitzpatrick 2/21/17

Environmental Protection Agency Administrator Scott Pruitt did not mention climate change or specific regulations in his first address to employees on Tuesday, instead emphasizing the agency's limitations and the need to provide more certainty for the energy industry.

Pruitt also did not mention air pollution or water pollution, key portions of the agency's mission, during the 11-minute address, and did not take questions. The speech could signal how Pruitt is focused more on avoiding government overreach rather than propagating new regulations.

"Regulators exist to give certainty to those that they regulate," he said, adding that he wants the agency to "avoid abuses that occur sometimes." That includes "using the guidance process to do rulemaking."

Pruitt may have been referring to a controversial guidance from the White House Council on Environmental Quality, which asks agencies conducting environmental reviews to consider how any infrastructure project would affect climate change. The guidance was technically voluntary, but critics said it was practically mandatory even though it didn't go through the full rulemaking process.

Pruitt's process-oriented speech differed in tone from the approach of his predecessor, Gina McCarthy, who emphasized the need for strong protections from pollution.

While serving as Oklahoma attorney general, Pruitt was involved in 13 lawsuits against the EPA, including high-profile cases over regulations on greenhouse gases and mercury pollution. He also took criticism from Democrats during his confirmation hearing for his close ties to the fossil fuel industry.

League of Conservation Voters Senior Vice President Tiernan Sittenfeld said in an emailed statement that Pruitt's speech "did nothing to address our grave concerns about him."

Pruitt said he hopes to avoid "regulation through litigation," referring to issuing contentious rules that attract lawsuits and ultimately leave a judge to decide details of what the agency can do, rather than agreeing on details with stakeholders.

Every regulation "needs to be tethered to statute," Pruitt said, adding that he believes Congress has been "very prescriptive" in its laws for the agency.

"The only authority that any agency has in the executive branch is the authority given to it by Congress," he said.

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Message

From: Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Sent: 4/27/2017 3:45:55 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]
Subject: **Attorney Client / Ex. 5**
Attachments:

Attorney Client / Ex. 5

Attorney Client / Ex. 5 Hope this is helpful.

Karyn

Karyn Wendelowski
Attorney-Advisor
Water Law Office
Office of General Counsel
(202)564-5493

Message

From: Campau, Anthony P. EOP/OMB; **EOP / Ex. 6**
Sent: 4/19/2017 12:49:42 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Catanzaro, Michael J. EOP/WHC; **EOP / Ex. 6**; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; McGartland, Al [McGartland.Al@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Inge, Carolyn [Inge.Carolyn@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]; Irving, Verna [Irving.Verna@epa.gov]
Subject: RE: WOTUS and CPP Call - **Conference Line/Code / Ex. 6**

I'm in a must-attend mtg until 9:30 and might run over. Can we say 9:45/10:00?

-----Original Message-----

From: Dravis, Samantha [mailto:dravis.samantha@epa.gov]
Sent: Wednesday, April 19, 2017 8:25 AM
To: Campau, Anthony P. EOP/OMB; **EOP / Ex. 6**
Cc: Catanzaro, Michael J. EOP/WHO; **EOP / Ex. 6**; Bolen, Brittany [mailto:bolen.brittany@epa.gov]; Schwab, Justin [mailto:schwab.justin@epa.gov]; McGartland, Al [mailto:McGartland.Al@epa.gov]; Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]; Fotouhi, David [mailto:fotouhi.david@epa.gov]; Nickerson, William [mailto:Nickerson.William@epa.gov]; Inge, Carolyn [mailto:Inge.Carolyn@epa.gov]; Kime, Robin [mailto:Kime.Robin@epa.gov]; Irving, Verna [mailto:Irving.Verna@epa.gov]
Subject: Re: WOTUS and CPP Call - **Conference Line/Code / Ex. 6**

Does 9:30am work for folks?

Sent from my iPhone

> On Apr 19, 2017, at 6:24 AM, Campau, Anthony P. EOP/OMB <Anthony.P.Campau@omb.eop.gov> wrote:
>
> Let us know if there's a window to discuss follow up on a couple of the questions from yesterday. We're thinking sometime before 1:00 p.m. today if possible.
>
> Thanks, team.
>
> Sent from my iPhone
>
>> On Apr 18, 2017, at 2:34 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>
>> Hi
>>
>> Will you please add this from Samantha's calendar and open the phone line from the conference room?
Thanks
>>
>> Topic: WOTUS and CPP Call - **Conference Line/Code / Ex. 6**
>> Date: Today
>> Time: 3:30 - 4:15 p.m.
>> Location: 3500 WJCN
>> Required: Michael J. Catanzaro; **EOP / Ex. 6**; [mailto:Michael.J.Catanzaro@epa.gov]; **EOP / Ex. 6**; Anthony.P.Campau; **EOP / Ex. 6**; [mailto:Anthony.P.Campau@omb.eop.gov]; Bolen, Brittany [mailto:bolen.brittany@epa.gov]; Schwab, Justin [mailto:schwab.justin@epa.gov]; McGartland, Al [mailto:McGartland.Al@epa.gov]; Greenwalt, Sarah [mailto:greenwalt.sarah@epa.gov]; Fotouhi, David [mailto:fotouhi.david@epa.gov]; Nickerson, William [mailto:Nickerson.William@epa.gov]
>> CC: Kime, Robin [mailto:Kime.Robin@epa.gov]; Inge, Carolyn [mailto:Inge.Carolyn@epa.gov]; Irving, Verna [mailto:Irving.Verna@epa.gov]
>>
>>
>> <meeting.ics>

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 2/27/2017 8:18:26 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Schnare, David [schnare.david@epa.gov]
CC: Shapiro, Mike [Shapiro.Mike@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject:
Attachments: **Attorney Client / Ex. 5**

Per Justin's request, here is a word version not on sharepoint.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Minoli, Kevin
Sent: Monday, February 27, 2017 2:02 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Schnare, David <schnare.david@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: **Attorney Client / Ex. 5**

Ryan and David-

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Let me know if I can provide you with anything else in the meantime.

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
Sent: 2/16/2017 9:24:30 PM
To: So, Katherine [so.katherine@epa.gov]; McCabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]
CC: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
Subject: Pruitt Pre-vote Clips 2/16/17

Flag: Flag for follow up

Below: New York Times, InsideEPA, The Hill (2), Roll Call, Reuters, E&E News (2), The Hill, Washington Examiner

New York Times

<https://www.nytimes.com/2017/02/16/us/politics/scott-pruitt-environmental-protection-agency.html>

E.P.A. Workers Try to Block Pruitt in Show of Defiance

By Coral Davenport 2/16/17

WASHINGTON — Employees of the Environmental Protection Agency have been calling their senators to urge them to vote on Friday against the confirmation of Scott Pruitt, President Trump's contentious nominee to run the agency, a remarkable display of activism and defiance that presages turbulent times ahead for the E.P.A.

Many of the scientists, environmental lawyers and policy experts who work in E.P.A. offices around the country say the calls are a last resort for workers who fear a nominee selected to run an agency he has made a career out of fighting — by a president who has vowed to “get rid of” it.

“Mr. Pruitt’s background speaks for itself, and it comes on top of what the president wants to do to E.P.A.,” said John O’Grady, a biochemist at the agency since the first Bush administration and president of the union representing the E.P.A.’s 15,000 employees nationwide.

The union has sent emails and posted Facebook and Twitter messages urging members to make the calls.

“It is rare,” said James A. Thurber, the director of the Center for Congressional and Presidential Studies at American University. “I can’t think of any other time when people in the bureaucracy have done this.”

The campaign is not likely to succeed. Before Friday’s vote, two Democratic senators, Heidi Heitkamp of North Dakota and Joe Manchin III of West Virginia, announced that they would vote for Mr. Pruitt’s confirmation, and only one Republican, Susan Collins of Maine, has said she will oppose him.

But because Civil Service rules make it difficult to fire federal workers, the show of defiance indicates that Mr. Pruitt will face strong internal opposition to many of his promised efforts to curtail E.P.A. activities and influence.

“What it means is that it’s going to be a blood bath when Pruitt gets in there,” said Christine Todd Whitman, a former Republican governor of New Jersey and the E.P.A. administrator during the first term of President George W. Bush.

Ms. Whitman predicted a standoff between career employees and their politically appointed bosses, noting that Mr. Pruitt will be blocked by legal Civil Service protections from immediately firing longtime employees but would likely be able to retaliate against them in other ways, such as shifting them to different jobs.

The showdown could embolden the White House and Congress to change federal Civil Service laws.

“The Civil Service is supposed to be a class of experts implementing policy, regardless of politics,” said Myron Ebell, a fellow at the free-market Competitive Enterprise Institute, who lead Mr. Trump’s environmental transition team. “If they have now become a special interest group pleading their own agenda, then it is probably time to look at reforming the Civil Service laws.”

The revolt has also angered supporters of Mr. Pruitt.

“There clearly has been an organized effort to demonize Pruitt and I think that’s unfair and unfortunate,” said Jeffrey Holmstead, a senior E.P.A. official in the George W. Bush administration who has been mentioned as a possible deputy to Mr. Pruitt. “I don’t remember, in my time, anything like this. But I think that anyone Trump nominated would be targeted.”

“We know that he’ll dismantle Clean Power Plan and the Waters of the U.S. rule, but he’s not going to go in there and start firing people,” said Mr. Holmstead, referring to Obama regulations on climate change and water pollution.

Mr. Pruitt, the attorney general of Oklahoma, has sued the E.P.A. at least 14 times, often in concert with the nation’s largest fossil fuel companies, to block major environmental regulations. He has questioned human-caused global warming and is a key architect of the national legal effort to dismantle former President Barack Obama’s climate change policies.

He has harshly criticized the role of the federal agency, saying much of its authority should be dissolved and left to the states. Mr. Pruitt’s legal views on environmental protection broadly, and the role of the E.P.A. specifically, appear to line up with Mr. Trump’s campaign claim that “environmental protection, what they do is a disgrace.”

Within days of Mr. Pruitt’s swearing-in, Mr. Trump is expected to sign one or more executive orders aimed at undoing Mr. Obama’s climate change regulations, and possibly to begin dismantling some E.P.A. offices and programs, according to people familiar with the White House’s plans.

While it will be impossible to undo most major rules or programs that quickly, the presidential signatures would authorize Mr. Pruitt to cut existing environmental regulations — and, eventually, the jobs of many of the people who enforce them.

“It seems like Trump and Pruitt want a complete reversal of what E.P.A. has done,” said Nicole Cantello, an E.P.A. lawyer who heads the Chicago-area union of the agency’s employees. “I don’t know if there’s any other agency that’s been so reviled. So it’s in our interests to do this.”

Ms. Cantello said most of her career at the E.P.A. has been focused on water protection, particularly on cleaning pollution in the Great Lakes. “I’m afraid all the work I’ve done will be abandoned,” she said.

Ms. Cantello and other longtime agency employees said that while they sometimes chafed under the administration of George W. Bush, who sought to loosen some environmental rules, they did not openly rebel against it — nor, they said, did they fear that Mr. Bush and his appointees wanted to eliminate the agency.

“I’ve been here for 30 years, and I’ve never called my senator about a nominee before,” said an E.P.A. employee in North Carolina who spoke on the condition of anonymity out of fear losing her job.

The calls to senators come on top of an anti-Pruitt protest last week by Chicago E.P.A. employees, and agency workers say that if Mr. Pruitt is confirmed, they intend to amplify their resistance to him, taking their case to the American public.

“At this point, it’s just, ‘call your senator,’ ” Mr. O’Grady, the union president, said. “We plan on more demonstrations, more rallies. I think you will see the employees’ union reaching out to N.G.O.s and having alliances with them,” he added, referring to nongovernmental organizations. “We’re looking at working with P.R. firms.”

The White House and E.P.A. did not respond to emailed questions about the employees’ campaign.

The E.P.A. emerged as a Republican political target during the Obama administration, after Mr. Obama turned to the agency to muscle through an environmental agenda that could not get through Congress.

While Mr. Trump campaigned on slashing Obama-era rules on climate change and waterways, his efforts might also be thwarted by Congress. But the E.P.A. is likely to be at the center of his antiregulatory agenda.

Experts say it is not surprising that liberal and environmental groups, such as the Sierra Club, have campaigned against Mr. Pruitt. Over 700 former E.P.A. employees have signed a letter to senators opposing his confirmation.

The Center for Media and Democracy, a left-leaning group, has sued the Oklahoma attorney general’s office to release about 3,000 of Mr. Pruitt’s emails, which they say could reveal more about his close ties with fossil fuel companies. An Oklahoma judge was expected to decide Thursday afternoon whether to order the release of the emails.

But former E.P.A. officials said the open rebellion by current employees is extraordinary, especially considering that their resistance could backfire once Mr. Pruitt arrives on the job.

“E.P.A. staff are pretty careful. They’re risk-averse,” said Judith Enck, who left the agency last month. “If people are saying and doing things like this, it’s because they’re really concerned.”

Senator Rob Portman, Republican of Ohio, said on Wednesday that after his office had received dozens of calls from people both opposing and supporting Mr. Pruitt’s nomination, including E.P.A. employees, he had not yet decided whether to vote for him. “I do have concerns about the Great Lakes,” he said.

Mr. O’Grady said that he expected the calls to continue through Friday’s vote. “I pray they don’t dismantle the E.P.A.,” he said. “It’s going to be like Humpty Dumpty — very difficult to put back together again.”

InsideEPA

<https://insideepa.com/daily-news/senate-democrats-vow-strict-oversight-pruitts-tenure-epa-chief>

Senate Democrats Vow Strict Oversight Of Pruitt's Tenure As EPA Chief

By Anthony Lacey 2/16/17

Senate Democrats are vowing strict oversight of Oklahoma Attorney General (AG) Scott Pruitt (R) after he wins confirmation as the next EPA administrator, warning his time as agency chief is not “going to end well” and drawing parallels with Reagan-era EPA Administrator Anne Gorsuch Buford, who was forced to resign in disgrace.

At a Feb. 16 press conference at the Capitol, several Democrats on the Senate Environment & Public Works Committee (EPW) vowed to drag out ongoing floor debate over Pruitt's nomination for as long as they could, up to 30 hours. Yet Pruitt is all but assured to win confirmation because no Republican except Sen. Susan Collins (ME) plans to vote against him, and the nominee also has the support of two moderate Democrats, Sens. Joe Manchin (WV) and Heidi Heitkamp (ND).

The Senate voted 54-46 on Feb. 16 to limit debate on Pruitt's nomination, teeing up a final confirmation vote around 1 p.m. Feb. 17. Collins voted to limit debate but will vote against confirmation. Sen. John McCain (R-AZ) will miss the final

vote because he is traveling to an overseas conference. However, the final vote is not expected to include any other changes from the procedural tally.

The planned vote would occur just before senators leave for a week-long President's Day recess. Any delay would have prevented Pruitt from beginning work for another week and would have given environmentalists more time to try to persuade more Republican senators to oppose the nomination.

As a result, once Pruitt is confirmed, Democratic senators are planning multiple unspecified steps regarding litigation, ethics disclosure, and press inquiries that can "open things up quite a lot" to lawmakers' scrutiny, according to EPW member Sen. Sheldon Whitehouse (D-RI). He said Pruitt's record challenging EPA regulations is a massive conflict of interest for an administrator, adding his tenure leading the agency would not "end well."

Citing the Democrats' strategy of a multi-pronged oversight approach to Pruitt as EPA chief, Whitehouse noted that the Feb. 13 resignation of President Donald Trump's national security adviser Michael Flynn occurred not because of bipartisan hearings in Congress, but "the work of a lot of people."

The EPW members also reiterated their call to delay consideration of Pruitt's nomination until further developments in an ongoing Oklahoma state court case in which the American Civil Liberties Union and other open records supporters are seeking emails related to Pruitt's tenure as the Sooner State's AG.

Delay Request

Sen. Tom Carper (D-DE), ranking member on EPW, said Democrats had requested a delay on Pruitt's vote until Feb. 27, but that Senate Majority Leader Mitch McConnell (R-KY) had declined the request at least twice. The state court is holding an expedited hearing Feb. 16, where it will consider a request to force disclosure of thousands of Pruitt emails, and Carper suggested that the content of those messages could help highlight Democrats' concerns about the nominee -- including his litigation over a slew of Obama-era EPA regulations, as well as his connections to various industries, such as the oil and gas sector.

Whitehouse charged that Republicans had a "fixation" with forcing release of emails from former Democratic presidential candidate Hillary Clinton and from former Obama EPA Administrators Lisa Jackson and Gina McCarthy. But for Pruitt, "all they do is look at the ceiling tiles," he said.

Whitehouse noted that Pruitt as AG has pursued extensive litigation against EPA regulations designed to protect air and water quality and to address climate change, and doubted Pruitt would defend them once confirmed. He said that Pruitt wants to turn EPA from an environmental "watchdog" into a "lapdog" for industry.

The senator said that Pruitt has a conflict of interest because of his record opposing EPA and press reports about his ties to industry. For example, in 2011 the nominee largely adopted -- with minor changes -- an oil and gas company-crafted letter to EPA opposing methane limits on the sector, but signed it under his own name.

"Conflicts of interest end in scandal, they end in litigation, they end in prosecution, and given where Mr. Pruitt is, I don't see any way that his tenure at the Environmental Protection Agency ends well," Whitehouse said. "I believe that our Republican friends will rue the day that they had this nomination rammed through the Senate on the very day that the emails were being litigated in Oklahoma in order to get ahead of any counter-pressure."

Gorsuch Parallels

The senator also drew parallels with Buford, the Reagan-era EPA administrator who resigned in disgrace after allegations that the agency mishandled its Superfund program. Her son, appellate Judge Neil Gorsuch, is Trump's nominee to be the next Supreme Court justice.

A former EPA official who served under Buford has warned about the tensions when political appointees seek to undermine the agency's mission. Lauren Stiller Rikleen, a lawyer in EPA Region 1 during her tenure and now a workforce consultant, writes in the Atlantic Group publication *Quartz* that Buford's "22-month stint as head of the EPA provides a painful history lesson about what happens when you put someone in charge of a federal agency who fiercely opposes its mission and disrespects the professionals who work there."

At the press event, Carper also noted the controversy over Buford and said that similar to Congress' strict oversight at the time, Pruitt's emails and other actions will be "closely monitored" by Democrats.

"In my gut, I feel that these emails, the nature of these emails and the entities with whom they were sent and received will help us understand the truth," he said. After learning the truth, senators "won't make a mistake" in voting on Pruitt's nomination.

Due to the imminent vote, however, "that opportunity is going to be denied to us."

Carper also suggested that the emails could harm GOP senators who might otherwise vote against Pruitt if they knew what was in the messages. Carper said he fears that several GOP colleagues are being put in a "very bad position and asked to vote for a nominee that they otherwise may not support."

In addition to Carper and Whitehouse, Democratic Sens. Tammy Duckworth (IL), Ed Markey (MA) and Jeff Merkley (OR) all spoke in opposition to Pruitt and vowed to delay a final floor vote for as long as they could. But barring any last-minute surprises, the nominee appears set for confirmation by the end of the week.

The Hill

<http://thehill.com/policy/energy-environment/319967-senate-dems-plan-all-night-protest-over-trumps-epa-pick>

Senate Dems plan all-night protest over Trump's EPA pick

By Jordain Carney 2/16/17

Senate Democrats are planning an all-night talkathon Thursday over President Trump's pick to lead the Environmental Protection Agency (EPA).

Asked whether Democrats are planning to hold the floor all night, a spokeswoman for Sen. Tom Carper (Del.) — the top Democrat on the Environment and Public Works Committee — confirmed that "that's the plan."

A spokesman for Minority Leader Charles Schumer (D-N.Y.) directed questions to Carper's office but noted that Democrats aren't planning to yield back debate time.

The late-night floor drama comes after senators voted to move forward with Scott Pruitt's nomination earlier Thursday in a 54-46 vote.

A final vote, absent a deal, is expected early Friday afternoon.

Democrats don't have the manpower to block Pruitt on their own. Cabinet nominees only need a simple majority, and Republicans have 52 seats.

Though Sen. Susan Collins (R-Maine) is expected to vote against Pruitt, Democratic Sens. Joe Manchin (W.Va.) and Heidi Heitkamp (N.D.) are supporting him.

Democrats blasted McConnell on Thursday for refusing to delay a vote on Pruitt. They wanted more time to wait for records from his time as Oklahoma attorney general requested more than two years ago.

The Center for Media and Democracy had sought, under Oklahoma's state records law, copies of emails between Pruitt's staff and representatives of various fossil fuel and conservative interests.

Eleven Democrats had already taken to the floor as of Thursday afternoon to protest Pruitt's nomination.

The Hill

<http://thehill.com/policy/energy-environment/319930-dems-blast-mcconnell-for-not-delaying-vote-on-epa-nominee>

Dems blast McConnell for not delaying vote on EPA nominee

By Timothy Cama 2/16/17

Senate Democrats on Thursday slammed Majority Leader Mitch McConnell (R-Ky.) for not delaying a vote on President Trump's pick to lead the Environmental Protection Agency (EPA).

Sen. Tom Carper (D-Del.) and some colleagues have repeatedly asked McConnell to delay the vote to confirm Scott Pruitt, currently Oklahoma's attorney general, while Democrats and a liberal group wait for public records requested more than two years ago.

McConnell declined, Carper said, and the Senate voted 54-46 on Thursday — with all Republicans and two Democrats supporting — to move forward on Pruitt and line up a vote for Friday.

"In my gut, I feel that these emails — the nature of these emails and the entities with whom they were sent and received — will help us understand the truth," Carper told reporters Thursday in renewing his call for a delay shortly after debate formally started on Pruitt on the Senate floor.

"My fear is that a number of members, especially on the other side, would be put in a very bad position, asked to vote for a nominee that they otherwise would not have supported, had they known the truth," he said.

Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) has pushed back against Democrats' delay requests, saying Pruitt has answered more questions than any EPA administrator nominee before.

A judge in Oklahoma is holding an emergency hearing later Thursday on a lawsuit the Center for Media and Democracy (CMD) filed last week to force Pruitt's office to comply with their request.

The liberal group had sought, under Oklahoma's state records law, copies of emails between Pruitt's staff and representatives of various fossil fuel and conservative interests.

Pruitt's office released hundreds of pages of documents last week, but CMD maintains that thousands of emails were left out.

Democrats said the decision to carry on with the Pruitt vote shows that the GOP is prioritizing getting Trump's cabinet confirmed over transparency concerns.

"Clearly, this is an epic ram-job," Sen. Sheldon Whitehouse (D-R.I.) said.

He said Republicans "could not get enough" of Hillary Clinton's emails and the emails of various federal employees they had investigated.

"But now, suddenly, emails between a nominee's office and the major players in the industry that he will be regulating as EPA administrator, all they do is look at the ceiling tiles," he added.

Sen. Ed Markey (D-Mass.) said Pruitt's refusal to give the Democrats the emails at issue is unprecedented.

"What Scott Pruitt said to our committee was 'go FOIA yourself,' " Markey joked.

Two Democrats, Sens. Joe Manchin (W.Va.) and Heidi Heitkamp (N.D.), both say they will vote for Pruitt, and Republican Sen. Susan Collins (Maine) plans to vote against him, giving him more than the 51 votes needed for confirmation.

Roll Call

<http://www.rollcall.com/news/politics/senate-democrats-plan-nighter-epa-nominee>

Senate Democrats Plan All-Nighter Over EPA Nominee

By Bridget Bowman 2/16/17

Senate Democrats are planning to once again stage a series of overnight speeches on the Senate floor, this time in opposition to Oklahoma Attorney General Scott Pruitt's nomination to head the EPA.

"We intend to stand our ground," said Delaware Sen. Thomas R. Carper, the ranking Democrat on the Environment and Public Works Committee. While Pruitt appears poised for confirmation, Carper said Democrats were not going quietly into the night.

"[If] we go home, we go to bed, say, 'That's it, we fought the good fight, it's 10 o'clock, we're going to call it a day,' there's zero chance we prevail," Carper said.

Carper was joined by fellow Democrats Sheldon Whitehouse of Rhode Island, Edward J. Markey of Massachusetts, Jeff Merkley of Oregon and Tammy Duckworth of Illinois at a Thursday press conference to criticize Republican leadership for not delaying Pruitt's confirmation.

To justify the delay, the Democrats cited ongoing litigation over emails between Pruitt's office and fossil fuel industries. An emergency hearing in Oklahoma is scheduled for Thursday afternoon, when a judge will rule whether the Center for Media and Democracy can obtain access to those emails.

The lawmakers acknowledged that if the judge ruled in the group's favor, senators would not have time to review the exchanges before a final confirmation vote Friday afternoon.

"That's the point," Whitehouse said. He accused GOP leaders of an "epic ram job" in pushing forward with Pruitt's confirmation before senators had time to review those emails.

Senate Majority Leader Mitch McConnell rejected the Democrats' request to postpone votes on Pruitt's nomination. On Thursday, the Kentucky Republican called on his fellow senators to confirm Pruitt.

"He's exceptionally qualified. He's dedicated to environmental protection," McConnell said. "And, as someone with state government experience, he understands the real-world consequences of EPA actions and knows that balance is the key to making policies that are sustainable over the long term."

Democrats contend that Pruitt's lawsuits brought against the EPA, and political donations he's received from the fossil fuel industry, show that his goals are contrary to the agency and his tenure would be mired with conflicts of interest.

"This is the wolf into the lamb fold. This is wrong. This is an appalling conflict of interest," Whitehouse said. "And conflicts of interest, in my experience as a prosecutor, don't end well."

Reuters

<http://www.reuters.com/article/usa-epa-pruitt-idUSL1N1G11GK>

Nearly 800 former EPA officials oppose Trump pick for agency

By Timothy Gardner 2/16/17

Nearly 800 former Environmental Protection Agency officials urged the U.S. Senate to reject President Donald Trump's nominee to run the agency as the chamber moved closer on Thursday to approving his pick, Scott Pruitt, the attorney general of oil-producing Oklahoma.

The 773 former officials signed a letter organized by the nonprofit group Environmental Integrity Project that said Pruitt's record and public statements suggest he does not agree with underlying principles of environmental laws.

As attorney general, Pruitt sued the EPA more than a dozen times on behalf of Oklahoma and he has cast doubts on the science of climate change.

"Mr. Pruitt has shown no interest in enforcing those laws, a critically important function for EPA," the letter said.

A spokesman for Pruitt did not immediately respond to a request for comment about the letter.

Pruitt's efforts to challenge the EPA's authority reflected "a fundamental lack of understanding and respect for the vital role that EPA plays in ensuring clean air and water for every American no matter where they live or their color or creed," said Joseph Santarella, an EPA enforcement lawyer under former Republican and Democratic administrations, who signed the letter.

Republican Senator Sue Collins came out against Pruitt on Wednesday saying his actions left her with doubts about whether his vision for the agency was consistent with its mission to protect human health and the environment.

Unless more Republicans join Collins, Pruitt's nomination is likely to succeed.

Senator John Barrasso, a Republican of coal producing Wyoming and head of the Senate energy committee, said Pruitt had "led the charge to rein in big government and Washington overreach."

The Senate advanced Pruitt's nomination on Thursday by a vote of 54 to 46, clearing the way for 30 hours of debate before a final vote, expected on Friday.

The path to stopping Pruitt became even steeper on Thursday after Senator Heidi Heitkamp, a Democrat, said she would vote for him, even though she had "concerns" about his commitment to a wide energy strategy that includes renewable power like solar and wind and his commitment to reduce emissions from energy operations.

E&E News

<http://www.eenews.net/greenwire/2017/02/16/stories/1060050196>

Ad war waged over Pruitt's nomination

By Kevin Bogardus 2/16/17

President Trump's nomination of Oklahoma Attorney General Scott Pruitt (R) for U.S. EPA administrator has become one of the most fierce and costly lobbying battles in his administration's early days.

From December to Monday of this week, environmental and public interest groups spent an estimated \$784,000 on broadcast and national cable television ads in opposition to Pruitt's nomination, according to an E&E News analysis of Kantar Media/CMAG advertising data.

Opposition on the airwaves to Pruitt ran second to only one other Trump nominee, Secretary of State Rex Tillerson. The former CEO of Exxon Mobil Corp. attracted an estimated \$851,000 in negative ad spending.

Still, Pruitt garnered the most opposition ads run among the president's picks so far. Issue ads that took aim at Pruitt ran 1,642 times.

The ad spending on Pruitt may have reached even higher. Kantar Media/CMAG advertising data shared with E&E News did not include ads that ran on local cable. In addition, the data did not have any digital advocacy spending on Pruitt's nomination.

Two environmental groups, Environmental Defense Action Fund and NextGen Climate Action, ran the bulk of the television ads opposing Pruitt.

NextGen, founded by billionaire hedge fund manager Tom Steyer, spent \$564,000 on those ads while EDF Action, including through its project Clean Air Moms Action, spent \$218,000.

Those ads took aim at Pruitt's record as Oklahoma attorney general, including his litigation against EPA that targeted several of the agency's regulations. Pruitt's criticism of EPA and his ties to oil and gas companies have sparked a green lobbying campaign that encompassed not only broadcast ads but online activism, protests and direct lobbying of senators who will vote on the EPA nominee.

"We can't trust Pruitt with our kids' health," said an EDF Action [ad](#), noting the Oklahoma attorney general's legal challenge of mercury standards.

That effort by environmental groups will culminate in Pruitt's Senate confirmation vote, which is likely to happen tomorrow.

"The strategy was to put pressure on senators who had to vote on his confirmation to demonstrate the significant public health impacts that a Pruitt EPA would have," said David Di Martino, a partner at Blue Engine Message & Media.

Di Martino is a consultant for a coalition of environmental groups that opposed Pruitt's nomination.

"The other strategic imperative was to highlight the flaws in the nominee, to frame him in a negative light as he takes over the EPA, if he is confirmed tomorrow," Di Martino said.

He added, "Based on those two objectives, I think it was a successful campaign."

Nevertheless, it appears Pruitt will be confirmed as EPA chief on a mostly party-line vote. Yesterday, Sen. Susan Collins (R-Maine) announced that she would oppose the nominee, but Sen. Joe Manchin (D-W.Va.) has already signaled his support for Pruitt.

Pruitt did find backing on the airwaves from one industry trade association, the National Association of Manufacturers. The group spent \$41,000 on television ads, according to Kantar Media/CMAG data.

"Make the EPA work for ALL Americans," said one [ad](#) run by NAM, urging viewers to call their senators.

In a statement announcing the ads last month, NAM President and CEO Jay Timmons said that for too long, EPA has ignored the economic impact of its various regulations.

Yet Pruitt's nomination for EPA administrator "signals that change is finally coming," Timmons said.

"By listening to the concerns and ideas of manufacturers, we believe the EPA can drive continued environmental quality improvements without threatening the jobs and paychecks of Americans who work in manufacturing," he said. "Congress should take action and confirm Scott Pruitt to get this agency functioning on day one."

Republicans targeted by ads

The environmental lobby's Pruitt opposition campaign on the airwaves focused mainly on Republican senators, airing ads hundreds of times in their home states' big markets. With the Senate at 52-48 under GOP control, green groups knew they had to draw Republican support to their cause.

"Based on the math, we know we needed Republicans so that's where we focused our energy," Di Martino said.

Di Martino noted that other lobbying by environmentalists on Pruitt's nomination consisted of advocacy on social media as well as display ads on various websites. Further, grassroots lobbying was geared toward Democratic senators to keep them united in opposition against the EPA nominee.

Maine was blanketed with anti-Pruitt ads, with spots airing 476 times in the Bangor and Portland markets.

Collins was a prime Republican target for environmental groups, considering she has voted for measures that acknowledged human activity contributes to climate change and has opposed other Trump nominees. In a statement yesterday, Fred Krupp, president of EDF Action, praised Collins for her "courageous decision" to vote against Pruitt.

Other GOP senators were also targeted by the green ad campaign against Pruitt, including Sens. Lamar Alexander of Tennessee, Jeff Flake of Arizona, Dean Heller of Nevada and Lindsey Graham of South Carolina.

All of those senators have discussed the impact of climate change to some degree. Yet it looks like none of them is set to vote down Trump's EPA nominee.

Graham did not look like a gettable vote for greens on Pruitt from the very beginning. Soon after the nomination was announced, the South Carolina senator said he was likely to support Pruitt (*E&E Daily*, Dec. 9, 2016).

Environmental groups pledged to remember who votes for Pruitt when campaign season revs up again. Di Martino noted that the Senate is moving forward on Pruitt's nomination without reviewing thousands of emails between the Oklahoma attorney general and oil and gas companies, which Democrats have urged be released (*E&E News PM*, Feb. 15).

"I think every senator who votes for Pruitt will have to answer for an EPA administrator that wasn't fully vetted, who shielded his records on his relationship with the fossil fuel industry," Di Martino said. "Once those documents are made public, those senators will be held accountable."

E&E News

<http://www.eenews.net/greenwire/2017/02/16/stories/1060050200>

Senate confirms Mulvaney, launches Pruitt debate

By George Cahlink, Kevin Bogardus and Arianna Skibell 2/16/17

The Senate backed Rep. Mick Mulvaney (R-S.C.) as White House budget director this morning in a largely partisan vote, clearing the way for an even more contentious battle over U.S. EPA administrator nominee Scott Pruitt.

"He'll get confirmed before we leave this week," said Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) this morning, repeating what he has said all week about Pruitt's prospects.

The Republican Oklahoma attorney general has drawn fierce resistance from Democrats and environmentalists for his lengthy track record of fighting EPA regulations. Democrats have not ruled out staying in session all night to protest Pruitt ahead of a confirmation vote at 1 p.m. tomorrow.

"Oh, I'd go all night, but I don't think it's necessary," said Sen. Jim Inhofe (R-Okla.), who has championed the selection of Pruitt. "It's all for show; they know the votes are there."

In one sign of that resistance, EPW ranking member Tom Carper (D-Del.) said he and fellow panel Democrats sent a letter to Senate Majority Leader Mitch McConnell (R-Ky.) asking him to delay, once again, the vote on Pruitt. The minority wants to review about 2,500 emails between Pruitt's office and fossil fuel companies and entities.

"The majority leader said no," Carper said at a news conference today. "He was not rude about it, but he said no."

Groups and lawmakers are suing Pruitt's office in Oklahoma state court over the records after he told them to file open records requests for them.

"Basically telling the Congress that we could go FOIA ourselves," Carper said. "We don't like that."

Maine Republican Sen. Susan Collins, a moderate, said she would oppose Pruitt. She will likely be the only Republican to do so.

North Dakota Sen. Heidi Heitkamp, a red-state moderate on the Democratic side who faces a likely competitive re-election bid in 2018, announced this morning that she would support Pruitt. She joins West Virginia Democrat Joe Manchin, who has long spoken positively about Pruitt.

Inhofe is hoping Pruitt can now help select other top positions at EPA that require Senate confirmation. The former EPW chairman also said he expects Pruitt to be active in helping kill regulations and roll back the Clean Power Plan.

EPA staffers are less thrilled. In a letter yesterday to McConnell, more than 700 former EPA employees criticized the Oklahoma attorney general for his record in not enforcing but rather challenging environmental laws.

"Mr. Pruitt's record and public statements strongly suggest that he does not agree with the underlying principles of our environmental statutes. Mr. Pruitt has shown no interest in enforcing those laws, a critically important function for EPA," said the letter.

Further, Democrats already are preparing to hamstring Pruitt. Thirty senators in the caucus sent Pruitt a letter today asking him to recuse himself from litigation he pursued against EPA.

"The American people must have the utmost confidence that members of the Trump administration are exclusively serving our national interests," said the senators.

"Until you agree to recuse yourself from all matters (including regulation) related to your litigation against the EPA for the duration of your time in office, they will lack that confidence."

If confirmed, Pruitt will likely face a lengthy ethics process that will result in his consulting with agency lawyers on a case-by-case basis (Greenwire, Feb. 14).

Mulvaney

The Senate confirmed Mulvaney 51-49, with all Democrats and only one Republican, Sen. John McCain (R-Ariz.), opposing him. McCain, the Senate Armed Services chairman, has been critical of Mulvaney's calls for cuts in defense spending.

"He's going to have his hands full," said Sen. Lindsey Graham (R-S.C.), who serves on both the Budget and Appropriations committees.

Graham said Mulvaney will need not only to work with Congress to pass annual spending plans, but also to work on ways to reduce the nation's debt over the long term.

Mulvaney, a fiscal hard-liner during his four terms in the House, has backed government shutdowns in the past rather than hiking federal spending and raising the debt ceiling.

His first task will be to help the administration craft at least the outlines of its fiscal 2018 budget proposal, which the White Ho

use has said is due out within the next few weeks.

The Hill

<http://thehill.com/policy/energy-environment/319891-dem-sens-heitkamp-manchin-to-support-trump-epa-pick>

Dem Sens. Heitkamp, Manchin to support Trump EPA pick

By Devin Henry 2/16/17

Two red-state Senate Democrats on Thursday said they will vote for President Trump's nominee to lead the Environmental Protection Agency.

In a statement, Sen. Heidi Heitkamp (N.D.) said she supports Scott Pruitt's nomination to EPA administrator. A spokesman for Sen. Joe Manchin said the West Virginian will also vote to confirm him.

"Once Mr. Pruitt is confirmed to lead EPA, I'll work to make sure EPA focuses on smart regulation and works with states and local communities to address issues like the unworkable Waters of the U.S. rule and the punitive final Clean Power Plan rules," Heitkamp said in a statement, referencing two controversial Obama-era EPA regulations.

"Though I have concerns about his commitment to a comprehensive energy strategy that includes renewables and his commitment to reduce emissions to protect our air and water, I'll work to hold Pruitt accountable and make sure North Dakota's interests are heard."

Both Heitkamp and Manchin are expected to face tough reelection fights in conservative, energy-producing states next year. Heitkamp said Thursday she will also support Trump's picks to lead the Interior and Energy Departments.

The Democrats' support for Pruitt solidifies his standing ahead of a confirmation vote expected on Friday.

Though GOP Sen. Susan Collins (Maine) came out against Pruitt's nomination on Wednesday, that defection will be offset by support from Heitkamp and Manchin, and no other Republican has said they will vote against Pruitt.

The Senate kicked off floor debate on Pruitt's nomination on Thursday, with Republicans hailing him as a potential agent of change at the EPA.

"Over the past eight years the political leaders of the EPA have taken actions that have undermined the American people's faith in the agency," Sen. John Barrasso (R-Wyo.) said.

As Oklahoma's attorney general, Pruitt "worked to protect the environment in his state while also working for the benefit of the people," Barrasso said.

But Democrats say Pruitt will erode the agency's agenda and favor fossil fuel interests over that of the environment, noting his career suing the EPA during his tenure in Oklahoma.

"Never have I been forced to consider a candidate to lead the EPA who has been so focused throughout his career on crippling the agency he now hopes to lead," Sen. Tom Carper (D-Del.) said.

Washington Examiner

<http://www.washingtonexaminer.com/two-democrats-vow-to-vote-for-pruitt-to-head-epa/article/2615027>

Two Democrats vow to vote for Pruitt to head EPA

By John Siciliano 2/16/17

Two Democrats have vowed to vote for President Trump's nominee to lead the Environmental Protection Agency, Oklahoma Attorney General Scott Pruitt.

Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, both from conservative fossil-fuel producing states, said they are going to vote for the nominee despite a last-ditch effort by Democrats to stall a final floor vote on Pruitt's confirmation.

"Once Mr. Pruitt is confirmed to lead EPA, I'll work to make sure EPA focuses on smart regulation and works with states and local communities to address issues like the unworkable Waters of the U.S. rule and the punitive final Clean Power Plan rules," Heitkamp said.

She has said that the Clean Power Plan, the Obama administration's far-reaching climate rule, was unfairly hard on her state, which is the largest oil producer in the upper Midwest through fracking. The carbon dioxide reductions the EPA called for North Dakota to achieve were higher than any other state.

"Though I have concerns about his commitment to a comprehensive energy strategy that includes renewables and his commitment to reduce emissions to protect our air and water, I'll work to hold Pruitt accountable and make sure North Dakota's interests are heard," Heitkamp added.

Manchin's office said he plans to vote for Pruitt.

Katherine So
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4511
so.katherine@epa.gov

Message

From: Horwitz, Sylvia [Horwitz.Sylvia@epa.gov]
Sent: 1/26/2017 11:19:38 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]
Subject: RE: FYI - upcoming moot court
Attachments: CLF MA Mot to Dismiss Amended Compl and Mem in Support.pdf; CLF (MA) Response_in_Opposition_to_EPA_Motion_to_Dismiss_Amended_Complaint.PDF; CFL (MA) EPA Reply brief as filed.pdf; CFL (MA) CLF Surreply .pdf; CLF v EPA (RI RDA) - Memorandum Opinion dismissing case 12-13-16.pdf

Flag: Flag for follow up

Justin –

Thanks for your quick reply!

There are four briefs:

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Here is the call-in information for the moot court:

Call-in information:

Conference Line/Code / Ex. 6

I will also forward the calendar invitation. Kate Bowers is the attorney arguing the case.

Sylvia

Sylvia Horwitz
Office of General Counsel
Water Law Office
WJC North 7353H
Phone: 202-564-5511

From: Schwab, Justin
Sent: Thursday, January 26, 2017 6:00 PM
To: Horwitz, Sylvia <Horwitz.Sylvia@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: RE: FYI - upcoming moot court

Thank you, Sylvia!

I will plan to attend by phone if I can keep that block of time free. Please send the briefs and decision if it is not too laborious to do so.

Best,

Justin

From: Horwitz, Sylvia

Sent: Thursday, January 26, 2017 5:59 PM

To: Schwab, Justin <schwab.justin@epa.gov>

Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>

Subject: FYI - upcoming moot court

Attorney Client / Ex. 5

Please let me know if you would like to attend the moot court, and if so, whether you expect to attend in person or by phone.

Sylvia Horwitz
Office of General Counsel
Water Law Office
WJC North 7353H
Phone: 202-564-5511

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 3/28/2017 3:02:21 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: FW: See Attached
Attachments: Revised Sessions Letter from Jordan-GC Mar 2017.docx

Justin and Mandy

Attorney Client / Ex. 5

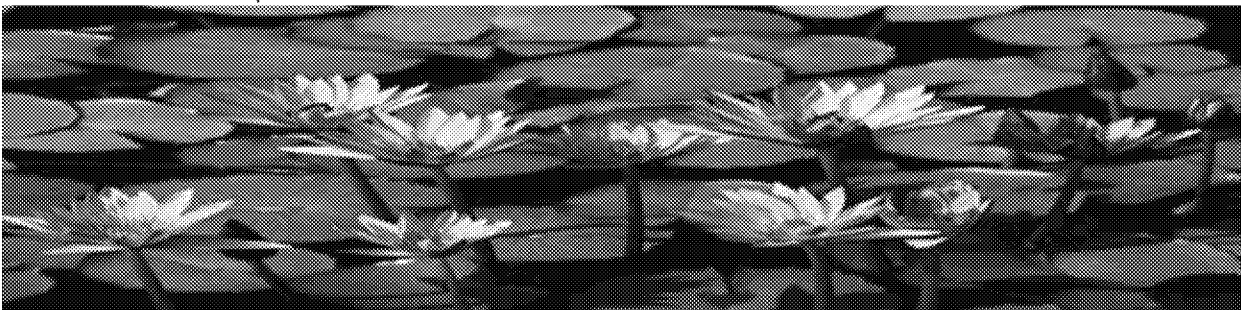
Thanks,

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Hooks, Samantha
Sent: Tuesday, March 28, 2017 10:56 AM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Subject: See Attached

*Samantha S. Hooks
Program Assistant
Office of General Counsel
Air and Radiation Law Office (ARLO)
Room 7340G
(202) 564-5569 (office)
(202) 564-5603 (fax)*



Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 4/3/2017 2:48:29 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: Website work this weekend

Here's the current CPP site: <https://www.epa.gov/cleanpowerplan>

From: Konkus, John
Sent: Monday, April 3, 2017 10:33 AM
To: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: FW: Website work this weekend

Justin and/or David: Can we jump on the phone this morning sometime to discuss? My extension is 564-2187.

From: Hart, Daniel
Sent: Monday, April 3, 2017 8:54 AM
To: Konkus, John <konkus.john@epa.gov>; Hull, George <Hull.George@epa.gov>
Cc: Orquina, Jessica <Orquina.Jessica@epa.gov>; Milbourn, Cathy <Milbourn.Cathy@epa.gov>
Subject: RE: Website work this weekend

Log in with your LAN ID and password to see the mockup here:
<https://wcms.epa.gov/node/174053/revisions/513155/view>

Below is a screenshot. As I mentioned to George, this is sitting in the **newsroom** area and should probably be moved into an **area owned by OAR**. This page was what I was thinking when we were first talking about updating the CPP homepage to link to an **'info'** page.

Attorney Client / Ex. 5

Daniel (Danny) Hart | Director, Office of Web Communication, Office of Public Affairs, U.S. EPA | desk: 202-564-7577 |
cell: **Personal Phone / Ex. 6**

From: Konkus, John

Sent: Saturday, April 01, 2017 6:40 PM

To: Hull, George <Hull.George@epa.gov>

Cc: Hart, Daniel <Hart.Daniel@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>; Milbourn, Cathy <Milbourn.Cathy@epa.gov>

Subject: Website work this weekend

George: per my voice message, we need to start building an updated page for the clean power plan ASAP with the goal of having it go live sometime on Monday.

Below is the outline that we would like. We have the photo we need already from Eric. Some of the links below we already have, others we will have to create. And we are creating content for those links on a parallel track. Therefore you can leave those blank and can add the link in when we have the new documents.

Is there any way we can get a little time put in on this project over the weekend so that we're off on the right foot on Monday morning?

Please call me with any questions or reply to this email. I'll be working all weekend and ready to help make this happen on time.

Thank you very much!

John

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Message

From: Dravis, Samantha [dravis.samantha@epa.gov]
Sent: 4/27/2017 3:05:50 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: RE: CPP proposed repeal

Attorney Client / Ex. 5

From: Schwab, Justin
Sent: Thursday, April 27, 2017 11:02 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: CPP proposed repeal

Sent from my iPhone

Begin forwarded message:

From: "Schwab, Justin" <schwab.justin@epa.gov>
Date: April 21, 2017 at 4:29:54 PM EDT
To: "Fotouhi, David" <fotouhi.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Cc: "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: FW: CPP proposed repeal

FYI – will be giving Ryan the clean copy in print form momentarily

From: Schmidt, Lorie
Sent: Friday, April 21, 2017 4:27 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: CPP proposed repeal

Attorney Client / Ex. 5

Justin – would you like me to get hard copy to you or Ryan?

Lorie

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 3/24/2017 11:22:59 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE:

Thanks, you too – and I'll pass along your thanks.

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Schwab, Justin
Sent: Friday, March 24, 2017 7:22 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: Re:

Thank you, Lorie, and everyone else who has put in hard work to get this first draft together in a short time. I appreciate your analysis and cautionary notes. I look forward to reviewing it, discussing it with OGC as well as the third floor, and doing whatever I can to help further this along.

I hope that everyone has a good weekend.

Sent from my iPhone

On Mar 24, 2017, at 7:18 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Justin and Kevin

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Attorney Client/DP Ex. 5

Message

From: ODea, Elise [odea.elise@epa.gov]
Sent: 4/11/2017 7:21:17 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]
Subject:
Attachments:

Attorney Client / Ex. 5

Hi Justin and David,

Please find attached two versions of the draft letter: (1) a clean version; and (2) a redline version that reflects our revisions to the draft that we sent you last week.

Thanks!
Elise

From: Schwab, Justin
Sent: Tuesday, April 11, 2017 3:10 PM
To: ODea, Elise <odea.elise@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>
Subject: Attorney Client / Ex. 5

Is there a redline as against the first draft circulated last week?

Sent from my iPhone

On Apr 11, 2017, at 3:08 PM, ODea, Elise <odea.elise@epa.gov> wrote:

Hi Justin and David,

Attorney Client / Ex. 5

Thank you,
Elise

--

Elise M. O'Dea

Solid Waste & Emergency Response Law Office

Office of General Counsel

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW

Washington, DC 20004

(202) 564-4201

odea.elise@epa.gov

Attorney Client / Ex. 5

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 3/22/2017 10:50:05 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Gunasekara, Amanda [gunasekara.amanda@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]

Subject:
Attachments:

Attorney Client / Ex. 5

Attached are 3 draft FR notices that

Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Lorie

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Message

From: DCOGCLN1/DC/USEPA/US [DCOGCLN1/DC/USEPA/US@epamail.epa.gov]
Sent: 4/14/2017 9:30:18 AM
To: Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Dolph, Becky [Dolph.Becky@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Fort, Daniel [Fort.Daniel@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Jones, Gail-R [Jones.Gail-R@epa.gov]; Duross, Jeanne [Duross.Jeanne@epa.gov]; Keith, Jennie [Keith.Jennie@epa.gov]; Justin Schwab [Schwab.Justin@epamail.epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Albores, Richard [Albores.Richard@epa.gov]; David Fotouhi [Fotouhi.David@epamail.epa.gov]
Subject: CTS Pending Items Newsletter

CTS Pending Items - Your goal is to make this list EMPTY! Click a link at the left and follow-up on every item.

Current Approver [Due Date] Showing Pending Items Only

Deliberative Process / Ex. 5

Message

From: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
Sent: 2/16/2017 6:37:01 PM
To: So, Katherine [so.katherine@epa.gov]; McCabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]
CC: McGonagle, Kevin [mcgonagle.kevin@epa.gov]
Subject: Pruitt Pre-vote Clips 2/16/17

Flag: Flag for follow up

Below: Reuters, E&E News (2), The Hill, Washington Examiner

Reuters

<http://www.reuters.com/article/usa-epa-pruitt-idUSL1N1G11GK>

Nearly 800 former EPA officials oppose Trump pick for agency

By Timothy Gardner 2/16/17

Nearly 800 former Environmental Protection Agency officials urged the U.S. Senate to reject President Donald Trump's nominee to run the agency as the chamber moved closer on Thursday to approving his pick, Scott Pruitt, the attorney general of oil-producing Oklahoma.

The 773 former officials signed a letter organized by the nonprofit group Environmental Integrity Project that said Pruitt's record and public statements suggest he does not agree with underlying principles of environmental laws.

As attorney general, Pruitt sued the EPA more than a dozen times on behalf of Oklahoma and he has cast doubts on the science of climate change.

"Mr. Pruitt has shown no interest in enforcing those laws, a critically important function for EPA," the letter said.

A spokesman for Pruitt did not immediately respond to a request for comment about the letter.

Pruitt's efforts to challenge the EPA's authority reflected "a fundamental lack of understanding and respect for the vital role that EPA plays in ensuring clean air and water for every American no matter where they live or their color or creed," said Joseph Santarella, an EPA enforcement lawyer under former Republican and Democratic administrations, who signed the letter.

Republican Senator Sue Collins came out against Pruitt on Wednesday saying his actions left her with doubts about whether his vision for the agency was consistent with its mission to protect human health and the environment.

Unless more Republicans join Collins, Pruitt's nomination is likely to succeed.

Senator John Barrasso, a Republican of coal producing Wyoming and head of the Senate energy committee, said Pruitt had "led the charge to rein in big government and Washington overreach."

The Senate advanced Pruitt's nomination on Thursday by a vote of 54 to 46, clearing the way for 30 hours of debate before a final vote, expected on Friday.

The path to stopping Pruitt became even steeper on Thursday after Senator Heidi Heitkamp, a Democrat, said she would vote for him, even though she had "concerns" about his commitment to a wide energy strategy that includes renewable power like solar and wind and his commitment to reduce emissions from energy operations.

E&E News

<http://www.eenews.net/greenwire/2017/02/16/stories/1060050196>

Ad war waged over Pruitt's nomination

By Kevin Bogardus 2/16/17

President Trump's nomination of Oklahoma Attorney General Scott Pruitt (R) for U.S. EPA administrator has become one of the most fierce and costly lobbying battles in his administration's early days.

From December to Monday of this week, environmental and public interest groups spent an estimated \$784,000 on broadcast and national cable television ads in opposition to Pruitt's nomination, according to an E&E News analysis of Kantar Media/CMAG advertising data.

Opposition on the airwaves to Pruitt ran second to only one other Trump nominee, Secretary of State Rex Tillerson. The former CEO of Exxon Mobil Corp. attracted an estimated \$851,000 in negative ad spending.

Still, Pruitt garnered the most opposition ads run among the president's picks so far. Issue ads that took aim at Pruitt ran 1,642 times.

The ad spending on Pruitt may have reached even higher. Kantar Media/CMAG advertising data shared with E&E News did not include ads that ran on local cable. In addition, the data did not have any digital advocacy spending on Pruitt's nomination.

Two environmental groups, Environmental Defense Action Fund and NextGen Climate Action, ran the bulk of the television ads opposing Pruitt.

NextGen, founded by billionaire hedge fund manager Tom Steyer, spent \$564,000 on those ads while EDF Action, including through its project Clean Air Moms Action, spent \$218,000.

Those ads took aim at Pruitt's record as Oklahoma attorney general, including his litigation against EPA that targeted several of the agency's regulations. Pruitt's criticism of EPA and his ties to oil and gas companies have sparked a green lobbying campaign that encompassed not only broadcast ads but online activism, protests and direct lobbying of senators who will vote on the EPA nominee.

"We can't trust Pruitt with our kids' health," said an EDF Action [ad](#), noting the Oklahoma attorney general's legal challenge of mercury standards.

That effort by environmental groups will culminate in Pruitt's Senate confirmation vote, which is likely to happen tomorrow.

"The strategy was to put pressure on senators who had to vote on his confirmation to demonstrate the significant public health impacts that a Pruitt EPA would have," said David Di Martino, a partner at Blue Engine Message & Media.

Di Martino is a consultant for a coalition of environmental groups that opposed Pruitt's nomination.

"The other strategic imperative was to highlight the flaws in the nominee, to frame him in a negative light as he takes over the EPA, if he is confirmed tomorrow," Di Martino said.

He added, "Based on those two objectives, I think it was a successful campaign."

Nevertheless, it appears Pruitt will be confirmed as EPA chief on a mostly party-line vote. Yesterday, Sen. Susan Collins (R-Maine) announced that she would oppose the nominee, but Sen. Joe Manchin (D-W.Va.) has already signaled his support for Pruitt.

Pruitt did find backing on the airwaves from one industry trade association, the National Association of Manufacturers. The group spent \$41,000 on television ads, according to Kantar Media/CMAG data.

"Make the EPA work for ALL Americans," said one ad run by NAM, urging viewers to call their senators.

In a statement announcing the ads last month, NAM President and CEO Jay Timmons said that for too long, EPA has ignored the economic impact of its various regulations.

Yet Pruitt's nomination for EPA administrator "signals that change is finally coming," Timmons said.

"By listening to the concerns and ideas of manufacturers, we believe the EPA can drive continued environmental quality improvements without threatening the jobs and paychecks of Americans who work in manufacturing," he said.

"Congress should take action and confirm Scott Pruitt to get this agency functioning on day one."

Republicans targeted by ads

The environmental lobby's Pruitt opposition campaign on the airwaves focused mainly on Republican senators, airing ads hundreds of times in their home states' big markets. With the Senate at 52-48 under GOP control, green groups knew they had to draw Republican support to their cause.

"Based on the math, we know we needed Republicans so that's where we focused our energy," Di Martino said.

Di Martino noted that other lobbying by environmentalists on Pruitt's nomination consisted of advocacy on social media as well as display ads on various websites. Further, grassroots lobbying was geared toward Democratic senators to keep them united in opposition against the EPA nominee.

Maine was blanketed with anti-Pruitt ads, with spots airing 476 times in the Bangor and Portland markets.

Collins was a prime Republican target for environmental groups, considering she has voted for measures that acknowledged human activity contributes to climate change and has opposed other Trump nominees. In a statement yesterday, Fred Krupp, president of EDF Action, praised Collins for her "courageous decision" to vote against Pruitt.

Other GOP senators were also targeted by the green ad campaign against Pruitt, including Sens. Lamar Alexander of Tennessee, Jeff Flake of Arizona, Dean Heller of Nevada and Lindsey Graham of South Carolina.

All of those senators have discussed the impact of climate change to some degree. Yet it looks like none of them is set to vote down Trump's EPA nominee.

Graham did not look like a gettable vote for greens on Pruitt from the very beginning. Soon after the nomination was announced, the South Carolina senator said he was likely to support Pruitt (*E&E Daily*, Dec. 9, 2016).

Environmental groups pledged to remember who votes for Pruitt when campaign season revs up again. Di Martino noted that the Senate is moving forward on Pruitt's nomination without reviewing thousands of emails between the Oklahoma attorney general and oil and gas companies, which Democrats have urged be released (*E&E News PM*, Feb. 15).

"I think every senator who votes for Pruitt will have to answer for an EPA administrator that wasn't fully vetted, who shielded his records on his relationship with the fossil fuel industry," Di Martino said. "Once those documents are made public, those senators will be held accountable."

E&E News

<http://www.eenews.net/greenwire/2017/02/16/stories/1060050200>

Senate confirms Mulvaney, launches Pruitt debate

By George Cahlink, Kevin Bogardus and Arianna Skibell 2/16/17

The Senate backed Rep. Mick Mulvaney (R-S.C.) as White House budget director this morning in a largely partisan vote, clearing the way for an even more contentious battle over U.S. EPA administrator nominee Scott Pruitt.

"He'll get confirmed before we leave this week," said Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) this morning, repeating what he has said all week about Pruitt's prospects.

The Republican Oklahoma attorney general has drawn fierce resistance from Democrats and environmentalists for his lengthy track record of fighting EPA regulations. Democrats have not ruled out staying in session all night to protest Pruitt ahead of a confirmation vote at 1 p.m. tomorrow.

"Oh, I'd go all night, but I don't think it's necessary," said Sen. Jim Inhofe (R-Okla.), who has championed the selection of Pruitt. "It's all for show; they know the votes are there."

In one sign of that resistance, EPW ranking member Tom Carper (D-Del.) said he and fellow panel Democrats sent a letter to Senate Majority Leader Mitch McConnell (R-Ky.) asking him to delay, once again, the vote on Pruitt. The minority wants to review about 2,500 emails between Pruitt's office and fossil fuel companies and entities.

"The majority leader said no," Carper said at a news conference today. "He was not rude about it, but he said no."

Groups and lawmakers are suing Pruitt's office in Oklahoma state court over the records after he told them to file open records requests for them.

"Basically telling the Congress that we could go FOIA ourselves," Carper said. "We don't like that."

Maine Republican Sen. Susan Collins, a moderate, said she would oppose Pruitt. She will likely be the only Republican to do so.

North Dakota Sen. Heidi Heitkamp, a red-state moderate on the Democratic side who faces a likely competitive re-election bid in 2018, announced this morning that she would support Pruitt. She joins West Virginia Democrat Joe Manchin, who has long spoken positively about Pruitt.

Inhofe is hoping Pruitt can now help select other top positions at EPA that require Senate confirmation. The former EPW chairman also said he expects Pruitt to be active in helping kill regulations and roll back the Clean Power Plan.

EPA staffers are less thrilled. In a [letter](#) yesterday to McConnell, more than 700 former EPA employees criticized the Oklahoma attorney general for his record in not enforcing but rather challenging environmental laws.

"Mr. Pruitt's record and public statements strongly suggest that he does not agree with the underlying principles of our environmental statutes. Mr. Pruitt has shown no interest in enforcing those laws, a critically important function for EPA," said the letter.

Further, Democrats already are preparing to hamstring Pruitt. Thirty senators in the caucus sent Pruitt a [letter](#) today asking him to recuse himself from litigation he pursued against EPA.

"The American people must have the utmost confidence that members of the Trump administration are exclusively serving our national interests," said the senators.

"Until you agree to recuse yourself from all matters (including regulation) related to your litigation against the EPA for the duration of your time in office, they will lack that confidence."

If confirmed, Pruitt will likely face a lengthy ethics process that will result in his consulting with agency lawyers on a case-by-case basis (*Greenwire*, Feb. 14).

Mulvaney

The Senate confirmed Mulvaney 51-49, with all Democrats and only one Republican, Sen. John McCain (R-Ariz.), opposing him. McCain, the Senate Armed Services chairman, has been critical of Mulvaney's calls for cuts in defense spending.

"He's going to have his hands full," said Sen. Lindsey Graham (R-S.C.), who serves on both the Budget and Appropriations committees.

Graham said Mulvaney will need not only to work with Congress to pass annual spending plans, but also to work on ways to reduce the nation's debt over the long term.

Mulvaney, a fiscal hard-liner during his four terms in the House, has backed government shutdowns in the past rather than hiking federal spending and raising the debt ceiling.

His first task will be to help the administration craft at least the outlines of its fiscal 2018 budget proposal, which the White House

has said is due out within the next few weeks.

The Hill

<http://thehill.com/policy/energy-environment/319891-dem-sens-heitkamp-manchin-to-support-trump-epa-pick>

Dem Sens. Heitkamp, Manchin to support Trump EPA pick

By Devin Henry 2/16/17

Two red-state Senate Democrats on Thursday said they will vote for President Trump's nominee to lead the Environmental Protection Agency.

In a statement, Sen. Heidi Heitkamp (N.D.) said she supports Scott Pruitt's nomination to EPA administrator. A spokesman for Sen. Joe Manchin said the West Virginian will also vote to confirm him.

"Once Mr. Pruitt is confirmed to lead EPA, I'll work to make sure EPA focuses on smart regulation and works with states and local communities to address issues like the unworkable Waters of the U.S. rule and the punitive final Clean Power Plan rules," Heitkamp said in a statement, referencing two controversial Obama-era EPA regulations.

"Though I have concerns about his commitment to a comprehensive energy strategy that includes renewables and his commitment to reduce emissions to protect our air and water, I'll work to hold Pruitt accountable and make sure North Dakota's interests are heard."

Both Heitkamp and Manchin are expected to face tough reelection fights in conservative, energy-producing states next year. Heitkamp said Thursday she will also support Trump's picks to lead the Interior and Energy Departments.

The Democrats' support for Pruitt solidifies his standing ahead of a confirmation vote expected on Friday.

Though GOP Sen. Susan Collins (Maine) came out against Pruitt's nomination on Wednesday, that defection will be offset by support from Heitkamp and Manchin, and no other Republican has said they will vote against Pruitt.

The Senate kicked off floor debate on Pruitt's nomination on Thursday, with Republicans hailing him as a potential agent of change at the EPA.

"Over the past eight years the political leaders of the EPA have taken actions that have undermined the American people's faith in the agency," Sen. John Barrasso (R-Wyo.) said.

As Oklahoma's attorney general, Pruitt "worked to protect the environment in his state while also working for the benefit of the people," Barrasso said.

But Democrats say Pruitt will erode the agenda's agenda and favor fossil fuel interests over that of the environment, noting his career suing the EPA during his tenure in Oklahoma.

"Never have I been forced to consider a candidate to lead the EPA who has been so focused throughout his career on crippling the agency he now hopes to lead," Sen. Tom Carper (D-Del.) said.

Washington Examiner

<http://www.washingtonexaminer.com/two-democrats-vow-to-vote-for-pruitt-to-head-epa/article/2615027>

Two Democrats vow to vote for Pruitt to head EPA

By John Siciliano 2/16/17

Two Democrats have vowed to vote for President Trump's nominee to lead the Environmental Protection Agency, Oklahoma Attorney General Scott Pruitt.

Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, both from conservative fossil-fuel producing states, said they are going to vote for the nominee despite a last-ditch effort by Democrats to stall a final floor vote on Pruitt's confirmation.

"Once Mr. Pruitt is confirmed to lead EPA, I'll work to make sure EPA focuses on smart regulation and works with states and local communities to address issues like the unworkable Waters of the U.S. rule and the punitive final Clean Power Plan rules," Heitkamp said.

She has said that the Clean Power Plan, the Obama administration's far-reaching climate rule, was unfairly hard on her state, which is the largest oil producer in the upper Midwest through fracking. The carbon dioxide reductions the EPA called for North Dakota to achieve were higher than any other state.

"Though I have concerns about his commitment to a comprehensive energy strategy that includes renewables and his commitment to reduce emissions to protect our air and water, I'll work to hold Pruitt accountable and make sure North Dakota's interests are heard," Heitkamp added.

Manchin's office said he plans to vote for Pruitt.

Katherine So
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4511
so.katherine@epa.gov

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 4/10/2017 5:36:09 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: **Attorney Client / Ex. 5**

Great! The point is well taken as a general matter nonetheless.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Schwab, Justin
Sent: Monday, April 10, 2017 12:46 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: **Attorney Client / Ex. 5**

FYI this came through just now - on the exact subject we were discussing - partially alleviating my concerns

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 10, 2017 at 12:38:39 PM EDT
To: "Schwab, Justin" <schwab.justin@epa.gov>, "Rees, Sarah" <rees.sarah@epa.gov>
Cc: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Subject: **Attorney Client / Ex. 5**

Hi Justin,

Attorney Client / Ex. 5

Josh

From: Schwab, Justin
Sent: Thursday, April 06, 2017 3:47 PM
To: Rees, Sarah <rees.sarah@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: **Attorney Client / Ex. 5**

Is this now in process? If not, do we need to discuss further?

Sent from my iPhone

On Apr 2, 2017, at 7:19 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client / Ex. 5

Sent from my iPhone

On Apr 1, 2017, at 12:48 PM, Rees, Sarah <rees.sarah@epa.gov> wrote:

Attorney Client / Ex. 5

From: Schwab, Justin

Sent: Saturday, April 1, 2017 7:26 AM

To: Gunasekara, Mandy

Cc: Dunham, Sarah; Page, Steve; Tsirigotis, Peter; Schmidt, Lorie; Lewis, Josh; Rees, Sarah

Subject: **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Sent from my iPhone

On Apr 1, 2017, at 7:06 AM, Gunasekara, Mandy
<Gunasekara.Mandy@epa.gov> wrote:

Attorney Client / Ex. 5

Sent from my iPhone

On Mar 31, 2017, at 5:14 PM, Dunham, Sarah
<Dunham.Sarah@epa.gov> wrote:

Attorney Client / Ex. 5

On Mar 31, 2017, at 4:50 PM,
Schwab, Justin
<schwab.justin@epa.gov> wrote:

What's "major" in this
context?

Sent from my iPhone

On Mar 31, 2017, at
4:49 PM, Dunham,
Sarah
<Dunham.Sarah@epa.gov> wrote:

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

<Props
alAgen
daEntr
y.pdf>

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 4/13/2017 11:36:52 PM
To: OGC HQ ADDs [OGC_HQ_ADDs@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: FYI: OGC's Weekly Repot
Attachments: OGC Weekly Report 4.13.17.docx

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Office Line: 202-564-8040
Direct Dial: Personal Phone / Ex. 6

From: Minoli, Kevin
Sent: Thursday, April 13, 2017 7:35 PM
To: Weekly Report Group
Cc: Knapp, Kristien; Packard, Elise; Schwab, Justin; Fotouhi, David; Dunham, Sarah; Shapiro, Mike; Cleland-Hamnett, Wendy; Breen, Barry
Subject: OGC's Weekly Repot

All- Please see OGC's weekly report. You may raise questions to Elise, Justin, David or me. Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Office Line: 202-564-8040
Direct Dial: Personal Phone / Ex. 6

Message

From: Cozad, David [Cozad.David@epa.gov]
Sent: 3/2/2017 10:46:52 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: FW: USS Lead - URGENT
Attachments: FINAL East Chicago SDWA ISE petition 3.2.17.pdf

From: Shinkman, Susan
Sent: Thursday, March 2, 2017 12:53 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Subject: FW: USS Lead - URGENT

FYI – This Petition just came in – it asks EPA to issue an Emergency Order under the SDWA, due to lead in the water in East Chicago.

There is a call scheduled this afternoon among Region 5, OW, OGC, WED. Mark will be on the call and report back.

From: Pollins, Mark
Sent: Thursday, March 02, 2017 12:39 PM
To: Shinkman, Susan <Shinkman.Susan@epa.gov>
Subject: FW: USS Lead - URGENT

Mark Pollins, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance (OECA)
U.S. Environmental Protection Agency
Phone: (202) 564-4001
Fax: (202) 564-0018

From: Korleski, Christopher
Sent: Thursday, March 02, 2017 11:58 AM
To: Thompson, Anita <Thompson.Anita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Cc: Bergman, Ronald <Bergman.Ronald@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Burneson, Eric <Burneson.Eric@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>; Poy, Thomas <poy.thomas@epa.gov>; Henry, Timothy <henry.timothy@epa.gov>; Korleski, Christopher <korleski.christopher@epa.gov>
Subject: RE: USS Lead - URGENT

Here's the Petition. ORC is reviewing it now.

Thanks

ck

From: Thompson, Anita
Sent: Thursday, March 02, 2017 10:47 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Korleski, Christopher <korleski.christopher@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>
Cc: Bergman, Ronald <Bergman.Ronald@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Burneson, Eric <Burneson.Eric@epa.gov>
Subject: FW: USS Lead - URGENT

Hi Folks,

Wanted to make sure you are in the loop. Do any of you have a copy of this petition? Peter has asked that I coordinate with you on how the agency will respond. I will set up a call to discuss today. Does 2pm EST work?

Thanks,
Anita

Anita Maria Thompson
Director, Drinking Water Protection Division
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
Washington, DC
Office Phone: 202-564-5673

Personal Phone / Ex. 6

From: Grevatt, Peter
Sent: Thursday, March 02, 2017 11:17 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>; Konkus, John <konkus.john@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; anitathompson@gmail.com;
Burneson, Eric <Burneson.Eric@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>
Subject: Re: USS Lead - URGENT

Thanks Nancy. We'll coordinate with R5 and OGC on this and will keep you in the loop.

Sent from my iPhone

On Mar 2, 2017, at 9:06 AM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
Personal Phone / Ex. 6 (mobile)

From: Kelley, Jeff
Sent: Thursday, March 02, 2017 11:03 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: FW: USS Lead - URGENT

FYI

Jeff Kelley

Director, Office of External Communications

U.S. EPA Region 5

ph: 312-353-1159

From: Garypie, Catherine

Sent: Thursday, March 02, 2017 10:01 AM

To: Drexler, Timothy <drexler.timothy@epa.gov>; Hassan, Jacob <hassan.jacob@epa.gov>; Pope, Janet <Pope.Janet@epa.gov>; Mitchell, James <mitchell.james@epa.gov>; Alcamo, Thomas <alcamo.thomas@epa.gov>; Rodriguez, Charles <rodriguez.charles@epa.gov>; Cannon, Phillippa <Cannon.Phillippa@epa.gov>; Haag, Daniel <Haag.Daniel@epa.gov>; Rowan, Anne <rowan.anne@epa.gov>; Arcaute, Francisco <Arcaute.Francisco@epa.gov>; Kelley, Jeff <kelley.jeff@epa.gov>

Cc: Kaiser, Steven <kaiser.steven@epa.gov>; Chingcuanco, Leonardo <Chingcuanco.Leonardo@epa.gov>; Toney, Marcy <toney.marcy@epa.gov>; Fulghum, Mary <fulghum.mary@epa.gov>

Subject: RE: USS Lead - URGENT

Here is the petition.

From: Garypie, Catherine

Sent: Thursday, March 2, 2017 9:42 AM

To: Drexler, Timothy <drexler.timothy@epa.gov>; Hassan, Jacob <hassan.jacob@epa.gov>; Pope, Janet <Pope.Janet@epa.gov>; Mitchell, James <mitchell.james@epa.gov>; Alcamo, Thomas <alcamo.thomas@epa.gov>; Rodriguez, Charles <rodriguez.charles@epa.gov>; Cannon, Phillippa <Cannon.Phillippa@epa.gov>; Haag, Daniel <Haag.Daniel@epa.gov>; Rowan, Anne <rowan.anne@epa.gov>; Arcaute, Francisco <Arcaute.Francisco@epa.gov>; Kelley, Jeff <kelley.jeff@epa.gov>

Cc: Kaiser, Steven <kaiser.steven@epa.gov>; Chingcuanco, Leonardo <Chingcuanco.Leonardo@epa.gov>; Toney, Marcy <toney.marcy@epa.gov>; Fulghum, Mary <fulghum.mary@epa.gov>

Subject: USS Lead - URGENT

See below, FYI. I do not have any more information at this time.

From: Deborah Gail Musiker [<mailto:Debbie.M.Chizewer@law.northwestern.edu>]

Sent: Thursday, March 2, 2017 9:38 AM

To: Lang, Annette (ENRD) <Annette.Lang@usdoj.gov>

Cc: Garypie, Catherine <garypie.catherine@epa.gov>

Subject: Heads up

Hi Annette and Catherine,

I wanted to give you a heads up that this morning NRDC and several groups, including the legal clinics and our clients, will be filing before EPA a petition for emergency action, under the Safe Drinking Water Act, to abate the imminent and substantial endangerment to East Chicago, Indiana residents from lead contamination in drinking water.

Thanks,

Debbie

Debbie (Musiker) Chizewer
Montgomery Environmental Law Fellow
Environmental Advocacy Clinic
Bluhm Legal Clinic
Northwestern University School of Law
375 E. Chicago Avenue, Chicago, IL 60611-3069
Debbie.M.Chizewer@law.northwestern.edu
312-503-4253

<USS Lead SDWA Petition 03 02 17.pdf>

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i, to Abate
the Imminent and Substantial Endangerment to East Chicago, Indiana Residents from Lead
Contamination in Drinking Water

**Submitted on Behalf of Petitioners Calumet Lives Matter; We the People for East
Chicago; East Chicago Calumet Coalition Community Advisory Group; Community
Strategy Group; the Hoosier Environmental Council; Duneland Environmental Justice
Alliance; Northwest Indiana Federation of Interfaith Organizations; The Twin City
Minister Alliance of East Chicago; Greater First Baptist Church of East Chicago;
Antioch Network of Church & Ministries; League of United Latin American Citizens—
Indiana Council; NAACP / NAACP Indiana State Conference Environmental and
Climate Justice Program; National Nurses United; Loyola University Chicago School of
Law's Health Justice Project; the Sargent Shriver National Center on Poverty Law;
University of Chicago Law School's Abrams Environmental Law Clinic; Northwestern
University Pritzker School of Law's Environmental Advocacy Clinic; and the
Natural Resources Defense Council**

March 2, 2017

Notice of Petition

Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Robert Kaplan
Acting Region 5 Administrator
Environmental Protection Agency
Mail Code: R-19 J
77 West Jackson Boulevard
Chicago, IL 60604

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For decades, the City of East Chicago (the “City” or “East Chicago”) has been plagued by a legacy of lead and arsenic contamination from the operation of industrial facilities in the city and surrounding areas. The City is also home to the USS Lead Superfund site (the “Superfund site”), listed under the federal government program designed to fund cleanup of hazardous contaminants and pollutants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”).

Against this backdrop of legacy contamination, residents of East Chicago recently discovered that at the Superfund site, over 40 percent of homes tested as part of a U.S. Environmental Protection Agency (“EPA” or “Agency”) pilot study had elevated levels of lead in the drinking water. The EPA concluded that the lead contamination is “system-wide,” caused not by legacy soil contamination, but instead by lead service lines and insufficient corrosion control treatment in the water system.

East Chicago’s drinking water is currently unsafe to drink. Based on the pilot study results, EPA has publicly stated that all residents of East Chicago should assume the presence of lead service lines and use a properly certified filter.¹ The Agency has also indicated that no further testing is necessary because the pilot study results are indicative of a “system-wide” problem.² EPA has provided filters for pilot study participants and has recommended that they continue to use filters for drinking, cooking and brushing teeth until further notice.³

East Chicago and the State of Indiana (“State”) have begun implementing longer term measures to address the water contamination, but these efforts are insufficient to address the immediate need to secure a safe source of drinking water for East Chicago residents. In connection with the release of EPA’s pilot study, enhanced corrosion control treatment measures were put in place in late 2016, and officials have made efforts to secure funding to begin a city-wide lead service line replacement process.⁴ However, additional measures are needed to ensure a safe drinking water supply, at least until the full benefits of the

¹ Ex. 1, EPA, *Frequently Asked Questions about Drinking Water Pilot Study* (Jan. 2017) (accessed Feb. 27, 2017) (“Pilot Study FAQs”), available at https://www.epa.gov/sites/production/files/2017-01/documents/faqs_uss_lead.pdf; Ex. 2, Sarah Reese, *EPA: East Chicago residents should use water filters*, The Times of Northwest Indiana (Feb. 6, 2017) (“Reese February water filters”), available at http://www.nwitimes.com/news/local/lake/epa-east-chicago-residents-should-use-water-filters/article_9e06a949-937f-5610-8c6b-a1316ff9a73d.html; Ex. 3, Sarah Reese, *State to provide free water testing to school districts*, The Times of Northwest Indiana, (Feb. 23, 2017) (“Reese school testing”), available at http://www.nwitimes.com/news/local/lake/state-to-provide-free-water-testing-to-public-schools/article_8be25d7f-b0f6-536f-9f4f-3baffa2540e9.html; Ex. 4, Associated Press, *Indiana to provide free water testing to school districts*, (Feb. 24, 2017), available at <http://www.therepublic.com/2017/02/24/in-indiana-schools-water-testing/>.

² Ex. 5, Letter from Robert Kaplan, Acting U.S. EPA Regional Administrator, to Peter Visclosky, Indiana Congressman (Jan. 3, 2017) (“January 2017 Kaplan letter”), at 3.

³ Ex. 1, Pilot Study FAQs.

⁴ The State has also begun to offer free drinking water testing in Indiana public schools, including in East Chicago. See Ex. 3, Reese school testing.

corrosion control treatment are in effect, including that lead levels are reduced, and/or the lead service lines are replaced.

Petitioners thus call upon EPA to use its emergency powers under the Safe Drinking Water Act (“SDWA” or the “Act”), 42 U.S.C. § 300i, to take action to abate the imminent and substantial endangerment to human health caused by lead contamination in East Chicago’s drinking water. As Petitioners demonstrate below, this contamination meets the SDWA requirements – and EPA’s own internal guidance – for immediate action by EPA, and requires a comprehensive federal response.

I. Background

A. Legacy of industrial contamination leading up to state declaration of disaster emergency

For decades, the residents of East Chicago have been plagued by industrial pollution from lead smelting and refining as well as other manufacturing processes that has left ongoing lead, arsenic and other contamination in the air and soil. EPA has designated East Chicago an environmental justice community. In the city of roughly 29,000 people, approximately 90 percent are people of color and over a third live below the federal poverty line.⁵ An even greater degree of households with young children in East Chicago – who are most susceptible to the worst impacts of lead exposure – fall below the federal poverty line. Moreover, residents of the Superfund site, compared to the City at large, are even more predominantly persons of color, with an even greater percentage living below the poverty line.

East Chicago housed several facilities on or in close proximity to the land that is now covered by the Superfund site, including the Anaconda Copper Company lead refinery; a pesticide lead arsenate manufacturing facility owned and operated by Dupont; the USS Lead refinery; the Eagle-Picher Company white lead plant; and the International Lead Refining Company metal-refining facility. These facilities are no longer in operation, but their legacy – along with that of numerous other facilities that have operated in East Chicago and surrounding areas – still haunts the City.

The community has faced real consequences as a result of the legacy of contamination.⁶ For example, soil testing results released in May 2016 revealed high levels of lead in the West

⁵ Ex. 6, United States Census, *QuickFacts: East Chicago city, Indiana*, available at <http://www.census.gov/quickfacts/table/RHI805210/1819486>. The median household income in East Chicago is \$26,486 per year. *Id.*

⁶ The State recently announced that East Chicago Urban Enterprise Academy, a charter school, is slated for soil sampling. The school is located north of the Superfund site and occupies property located a half mile east of the old US Reduction Co., a former aluminum and lead smelter facility. See Ex. 7, Lauren Cross, *Old smelter north of Superfund site to be investigated*, The Times of Northwest Indiana (Feb. 26, 2017) (“Cross old smelter investigation”), available at

Calumet Housing Complex, which resulted in the closure of the building and residents being forced to move. On the eve of the fall school semester last year, the Carrie Gosch Elementary School was closed down due to safety concerns arising out of the lead levels at the nearby West Calumet Housing Complex.⁷ Residents throughout the City face compounded exposures to lead, including residue of contaminated dust from basement flooding, lead dust at entry ways and lead paint.⁸

On December 1, 2016, before the EPA study findings were released to the public, the City of East Chicago sought a declaration of emergency from then-Governor Mike Pence before he left office to serve as Vice President of the United States.⁹ Pence's office rejected the request.¹⁰ After Pence left state office, and after EPA released the results of the drinking water pilot study, the City renewed the request in a letter to Governor Holcomb, who declared a disaster emergency for the Superfund site.¹¹

B. Water contamination and 42 U.S.C. §300i

In the fall of 2016, EPA conducted a pilot water study to determine whether remediation efforts to excavate the lead in soil at the Superfund site would result in a dislodging of lead from the city's water pipes.¹² Results of the study, released in December 2016, revealed that lead levels in East Chicago's drinking water are well above the action level set by EPA that triggers corrective action by public water systems.¹³ Moreover, results revealed high levels in samples collected *before* disruption of the soil.¹⁴ Despite knowledge of these findings in December 2016, to date no agency has made a broad commitment to ensure the

http://www.nwitimes.com/news/local/lake/old-smelter-north-of-superfund-site-to-be-investigated/article_8a759b44-6bb6-5618-bc2b-fb40021673e4.html.

⁷ Ex. 8, Joseph Pete and Carrie Gosch, *Elementary students relocated over lead fears*, The Times of Northwest Indiana (Aug. 8, 2016), available at http://www.nwitimes.com/news/local/lake/east-chicago/carrie-gosch-elementary-students-relocated-over-lead-fears/article_9613b63e-0722-51dd-a7f0-6090566c9c89.html.

⁸ Residents of East Chicago also face relatively high levels of lead pollution in the air from concentrated industrial sources in and around their city, as evidenced by the number of lead air quality monitors in East Chicago (two monitors) and nearby Gary and Hammond, as well as Burns Harbor (one monitor each). See Ex. 9, Indiana Department of Environmental Management, Lead (Pb) Data Map, available at <http://www.in.gov/idem/airquality/2651.htm>.

⁹ Ex. 10, Letter from Anthony Copeland, East Chicago Mayor, to Michael Pence, Indiana Governor (Dec. 1, 2016).

¹⁰ Ex. 11, Letter from Mike Ahearn, General Counsel's Office of Indiana Governor Mike Pence, to Anthony Copeland, East Chicago Mayor (Dec. 14, 2016).

¹¹ Ex. 12, Craig Lyons, *Holcomb grants East Chicago disaster request Pence denied*, Chicago Tribune (Feb. 9, 2017), available at <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-east-chicago-disaster-st-0210-20170209-story.html>.

¹² Ex. 13, EPA, *USS Lead Drinking Water Pilot Study*, (accessed Feb. 27, 2017) ("Pilot Study webpage"), available at <https://www.epa.gov/uss-lead-superfund-site/uss-lead-drinking-water-pilot-study>.

¹³ *Id.*

¹⁴ *Id.*

safety of the drinking water supply to residents of the City as a whole, aside from long-term measures like corrosion control and lead pipe replacement.

Where, as here, state and local authorities have failed to adequately address a public health crisis, the SDWA empowers EPA to act. Section 1431 of the Act vests EPA with broad emergency authority to address endangerments to public health from contaminated drinking water. The EPA Administrator may use these emergency powers “upon receipt of information that a contaminant which is present in or is likely to enter a public water system. . . . may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons.”¹⁵ Once the Administrator receives this information, he may “take such actions as he may deem necessary in order to protect [public] health.”¹⁶ These actions “may include (but shall not be limited to). . . issuing such orders. . . requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment.”¹⁷ EPA has, in the past, used its emergency powers to issue orders to provide alternative safe water sources to community members, require public notice of the drinking water hazard, require contributors to the hazard to treat or otherwise mitigate the hazardous conditions, and require additional monitoring and data collection activities.¹⁸ EPA exercised such emergency authority to provide oversight on water treatment techniques in the case of Flint, Michigan.¹⁹

II. Interests of Petitioners

Petitioners are community groups and local, regional and national advocacy organizations seeking a lead free environment for East Chicago. Petitioners include: Calumet Lives Matter; We the People for East Chicago; East Chicago Calumet Coalition Community Advisory Group (the “CAG”); Community Strategy Group; the Hoosier Environmental Council; Duneland Environmental Justice Alliance; Northwest Indiana Federation of Interfaith Organizations; The Twin City Minister Alliance of East Chicago; Greater First Baptist Church of East Chicago; Antioch Network of Church & Ministries; League of United Latin American Citizens—Indiana Council (“LULAC”); NAACP / NAACP Indiana State Conference Environmental and Climate Justice Program; National Nurses United; Loyola University Chicago School of Law’s Health Justice Project; the Sargent Shriver National Center on Poverty Law (the “Shriver Center”); University of Chicago Law School’s Abrams

¹⁵ 42 U.S.C. § 300i(a).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See H.R. Rep. No. 93-1185, 1974 U.S.C.C.A.N. 6454, 6487 (1974); Ex. 14, *In re Yakima Valley Dairies*, Admin. Order on Consent (U.S. EPA Region 10, Mar. 5, 2013), available at https://www3.epa.gov/region10/pdf/sites/yakimagw/consent_order_yakima_valley_dairies_marc_h2013.pdf.

¹⁹ Ex. 15, *In the Matter of City of Flint, Michigan; Michigan Department of Environmental Quality; and the State of Michigan* (Jan. 21, 2016) (U.S. EPA, emergency order issued pursuant to Section 1431 of the Safe Drinking Water Act, 42 USC § 300i) (“Flint emergency order”), available at https://www.epa.gov/sites/production/files/2016-01/documents/1_21_sdwa_1431_emergency_admin_order_012116.pdf.

Environmental Law Clinic; Northwestern University Pritzker School of Law's Environmental Advocacy Clinic; and the Natural Resources Defense Council ("NRDC") (collectively, "Petitioners").

Petitioners have advocated on behalf of East Chicago residents in a wide-range of issues to address cumulative exposures of lead. For example, on November 1, 2016, We the People for East Chicago, Calumet Lives Matter and three East Chicago residents sought to intervene in the underlying federal Superfund action involving a lawsuit filed by EPA and the State against polluting facilities in connection with response and clean up actions in areas of the Superfund site.²⁰ Petitioners have advocated on local, state and national efforts to secure long term efforts in East Chicago and other cities to replace lead service lines at low or no cost to residents. Still other groups have been advocating on behalf of East Chicago residents facing the consequences of a wide range of lead exposure. For example, the Shriver Center has been advocating on behalf of residents living in the West Calumet Housing Complex in connection with their forced housing displacement due to lead soil contamination. As far back as 1986, NRDC sued EPA over the agency's failure to act on studies showing high lead levels in air emissions at the former USS Lead facility, which is now the Superfund site in East Chicago.²¹ And since the results of EPA's water pilot study were made public in December 2016 showing elevated lead levels in the drinking water, the Community Strategy Group and the CAG have been advocating with local and state officials to obtain water filters and/or bottled water for residents at the Superfund site and greater East Chicago.

A detailed description of each of the Petitioners is located at Appendix A.

III. Lead Is Present and Likely to Persist in East Chicago's Drinking Water, and Presents an Imminent and Substantial Endangerment to Human Health

A. East Chicago's drinking water is contaminated with lead, and lead will likely continue to enter the City's drinking water

The data showing elevated levels of lead in East Chicago's drinking water emerged from a pilot study conducted by EPA in 2016.²² EPA undertook the study, which targeted 43 homes within the Superfund site, to determine if the soil excavation work would cause lead to be dislodged from the old lead service lines. Studies have shown that physical disturbances, including from construction work, can result in increased lead released from water pipes.²³ Of those homes tested, the study revealed that 18 homes, or over 40 percent, had levels of lead above the federal action level of 15 parts per billion (ppb). Three homes

²⁰ Ex. 16, *See United States and Indiana v. Atlantic Richfield Company and E.I. DuPont De Nemours Company*, Motion to Intervene, Civil Action No. 2:14-cv-00312 (N.D. Ind. 2016).

²¹ Ex. 17, *E.P.A Faces a Suit on Lead Emissions*, New York Times (Aug. 20, 1986), *available at* <http://www.nytimes.com/1986/08/21/us/epa-faces-a-suit-on-lead-emissions.html>.

²² Ex. 13, Pilot Study webpage.

²³ *Id.*

had samples measuring at least 81 ppb (five times the federal action level), and with one home's highest sample registering at 130 ppb (nearly nine times the federal action level).²⁴

While testing was conducted to determine the impact from the soil excavation work, the results of the pilot study showed elevated levels of lead *before* excavation ever took place.²⁵ EPA concluded that the primary reasons for the elevated lead levels were unrelated to the soil contamination and, instead, arose from: "(1) presence of lead in plumbing materials and (2) insufficient orthophosphate levels in the drinking water system."²⁶ Despite the intent of the study, EPA has "not yet come to any conclusions regarding the effect of excavation work on lead service lines."²⁷

In releasing the data, EPA stated that it is possible that up to 90 percent of homes in East Chicago have lead service lines and all residents (not just those in the Superfund site) should therefore assume they have lead lines.²⁸ For the pilot study participants, EPA installed filters on kitchen taps and recommended "that participants continue to use the filter for drinking, cooking, and brushing. . . teeth until further notice" as well as that "[a]erators should be cleaned on [a] weekly basis" and "[f]ilter cartridges should be replaced regularly."²⁹ Concluding that the water contamination is a "system-wide" problem, EPA recommended that residents use properly certified filters.³⁰ However, despite its awareness of the presence of lead in select houses, EPA indicated that it would not conduct additional testing throughout the City "because the pilot study identified a system-wide issue that the city is addressing with [the Indiana Department of Environmental Management] IDEM" and that "[a]dditional sampling would confirm a problem that has already been identified and is being appropriately remedied."³¹ To Petitioners' knowledge, no government agency has committed to comprehensive testing to gauge the full extent of the problem or is providing alternative sources of clean drinking water in the near-term for impacted residents throughout the City.

²⁴ Ex. 18, EPA, *USS Lead Drinking Water Pilot Study: Data* (accessed Feb. 28, 2017) ("Pilot Study data"), available at <https://www.epa.gov/sites/production/files/2017-01/documents/uss-lead-dw-pilot-study-data-20170120-127pp.pdf>.

²⁵ Ex. 13, Pilot Study webpage; Ex. 6, Cross old smelter investigation.

²⁶ Ex. 5, January 2017 Kaplan letter.

²⁷ Ex. 13, Pilot Study webpage.

²⁸ Ex. 19, Associated Press, *EPA officials: Up to 90% of homes in East Chicago, IN have lead water lines* (Feb. 6, 2017), available at <http://fox59.com/2017/02/06/epa-officials-up-to-90-of-homes-in-east-chicago-in-have-lead-water-lines/>.

²⁹ Ex. 1, Pilot Study FAQs.

³⁰ *Id.*; see also Ex. 3, Reese February water filters.

³¹ Ex. 5, January 2017 Kaplan letter.

B. Lead in drinking water presents a substantial and imminent danger to East Chicago residents, particularly at the Superfund site where the residents face exceptionally high cumulative impacts of lead exposure

East Chicago residents, and particularly those living at the Superfund site, face an ongoing imminent and substantial endangerment from lead contamination in their drinking water. The lead in drinking water has increased, and continues to increase, the cumulative exposure to residents of this environmental justice community that is home both to a Superfund site and other polluting facilities across the City and in neighboring areas, imposing decades of lead and arsenic contamination in the soil and the air.³²

The poisonous effects of lead on “virtually every system in the body,” and particularly on the developing brains of young children, are well documented.³³ “Even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement,” and the effects are irreversible.³⁴ The scientific community has not identified *any* threshold of lead in blood below which there are no adverse health impacts.³⁵

Increased lead exposure from drinking water is dangerous because “drinking water can make up 20 percent or more of a person’s total exposure to lead.”³⁶ A person’s exposure to lead starts very early, with a woman’s lead levels relevant to or impacting her fetus: “[d]uring pregnancy, lead is often remobilized from bone and may be transferred from mother to fetus. Approximately 80 percent of lead in fetal cord blood appears to derive from maternal bone stores. Maternal lead can also be transferred to infants during

³² *E.g., Me. People’s Alliance v. Mallinckrodt, Inc.*, 471 F.3d 277, 288 (1st Cir. 2006).

³³ Ex. 20, Centers for Disease Control and Prevention, Preventing Lead Poisoning in Young Children: Chapter 2 (Oct. 1991), *available at* <http://www.cdc.gov/nceh/lead/publications/books/plpyc/chapter2.htm>; *see also* 80 Fed. Reg. 278, 290 (Jan. 5, 2015) (“Lead has been demonstrated to exert a broad array of deleterious effects on multiple organ systems.”); 56 Fed. Reg. 26,460, 26,467-68 (June 7, 1991).

³⁴ Ex. 21, Centers for Disease Control and Prevention, *What Do Parents Need to Know to Protect Their Children?* (last updated January 30, 2017), *available at* http://www.cdc.gov/nceh/lead/ACCLPP/blood_lead_levels.htm.

³⁵ Ex. 22, Centers for Disease Control and Prevention, National Biomonitoring Program, Factsheet: Lead (last updated July 12, 2013), *available at* http://www.cdc.gov/biomonitoring/Lead_FactSheet.html (“No safe blood lead level has been identified.”). *See also* Flint emergency order, at ¶ 28.

³⁶ Ex. 23, EPA, *Lead and Copper Rule: A Quick Reference Guide for Schools and Child Care Facilities that are Regulated Under the Safe Drinking Water Act* (Oct. 2005), *available at* <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10058C5.txt>.

breastfeeding.”³⁷ For infants whose diet consists of baby formula made with drinking water, lead in drinking water can make up over 85 percent of total lead exposure.³⁸ Lead levels in drinking water above the federal action level have been associated with an increase in the rate of individuals with elevated blood lead levels.³⁹ Exposure to lead-contaminated drinking water has also been associated with fetal death and reduced birth rates.⁴⁰ As EPA has recognized, “[i]nfants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development.”⁴¹

Nor are adults free from the negative health impacts of lead. Research shows an association between adult blood lead levels and risk of all-cause mortality and cardiovascular mortality.⁴² In addition, the U.S. Department of Health and Human Services has determined that lead and lead compounds are reasonably anticipated to be human carcinogens, and EPA has determined that lead is a probable human carcinogen.⁴³

Further, EPA has set the Maximum Contaminant Level Goal (“MCLG”) for lead in water at zero because “(1) there is no clear threshold for some non-carcinogenic lead health effects,

³⁷ Ex. 24, California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, Public Health Goals for Chemicals in Drinking Water: Lead (Apr. 2009), at 6 (internal citations omitted), *available at* https://oehha.ca.gov/media/downloads/water/chemicals/phg/leadfinalphg042409_0.pdf.

³⁸ Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 Fed. Reg 26,460, 26,468 (June 7, 1991) (codified at 40 C.F.R. Part 141 Subpart I) (“Lead and Copper Rule”) (cited by Ex. 25, Triantafyllidou, S., and Edwards, M., Lead (Pb) in tap water and in blood: implications for lead exposure in the United States. *Critical Reviews in Environmental Science and Technology*, 42(13), 1297–1352 (2012), excerpt provided, in turn cited in Ex. 26, EPA, *Proposed Modeling Approaches for a Health-Based Benchmark for Lead in Drinking Water*, at 20, *available at* https://www.epa.gov/sites/production/files/2017-01/documents/report_proposed_modeling_approaches_for_a_health_based_benchmark_for_lead_in_drinking_water_final_0.pdf.

³⁹ Ex. 27, Ronnie Levin, et al., *Lead Exposure in U.S. Children, 2008: Implications for Prevention*, 116 *Environ. Health Perspect.* (1) 1285-93 (2008), *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2569084/>; Ex. 28, CDC, *Blood Lead Levels in Residents of Homes with Elevated Lead in Tap Water—District of Columbia, 2004*, 53 *MMWR Weekly* (No. 12) 268-70 (Apr. 1, 2004), *available at* <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5312a6.htm>.

⁴⁰ Ex. 29, Marc Edwards, *Fetal Death and Reduced Birth Rates Associated with Exposure to Lead-Contaminated Drinking Water*, 48 *Envtl. Sci. & Tech.* 739-40 (2013), *available at* <http://pubs.acs.org/doi/pdf/10.1021/es4034952>.

⁴¹ Ex. 30, EPA, *Basic Information about Lead in Drinking Water*, *available at* <http://water.epa.gov/drink/contaminants/basicinformation/lead.cfm>.

⁴² Ex. 31, See Brown, Mary Jean and Margolis, Stephen, National Center for Environmental Health, Centers for Disease Control, *Lead in Drinking Water and Human Lead Levels in the United States* (2012), *available at* <https://www.cdc.gov/mmwr/preview/mmwrhtml/su6104a1.htm>.

⁴³ *Id.*

(2) a substantial portion of the sensitive population already exceeds acceptable blood lead levels, and (3) lead is a probable carcinogen.”⁴⁴

In short, there is no safe level of lead in drinking water. And while the health impacts of lead may be more profound during the early years, no age group is exempt from negative outcomes associated with lead exposure.

Petitioners have reason to be concerned about the health impacts of exposure to lead from East Chicago’s drinking water. A recent study conducted by Reuters evaluated blood lead level data for the census tract containing the Superfund site, the City of East Chicago and the State of Indiana, from 2005 to 2015.⁴⁵ The data shows not only disturbing levels of lead in child residents of the Superfund site, but also of the city as a whole, with approximately 4 to 18 percent of tested children in the city with levels above the Center for Disease Control’s current reference level of 5 µg/dL, far above the state and national rates. Given the exceedingly low rate of child blood lead screening in Lake County during this period, and particularly between 2012 and 2015, it is very likely that the actual number of children above the reference level in East Chicago is substantially greater.⁴⁶ While lead poses threats to adult health as well, and adults in East Chicago have been tested for lead, the results of this testing have not been forthcoming.

The threat to health from high levels of lead in city drinking water is even more alarming because the East Chicago community may be more at risk than other communities in the country for elevated blood lead levels and lead poisoning from sources other than water. Low income is a risk factor for lead poisoning, and the proportion of families living below the poverty level in East Chicago is more than three times the national proportion (34.6 percent in East Chicago vs. 11.3 percent nationally in 2015 estimates).⁴⁷ This figure is particularly stark for families with children under 5 years of age, i.e., those kids most impacted by lead exposure, with 52.7 percent of such families in East Chicago living below the poverty level. As noted above, residents of the Superfund site are more predominantly

⁴⁴ Ex. 15, Flint emergency order, at ¶ 27, citing the Lead and Copper Rule, at 26,467.

⁴⁵ Ex. 32, Schneyer, Joshua, and Bell, M.B., *Special Report: Flawed CDC report left Indiana children vulnerable to lead poisoning*, Reuters.com (Sep. 28, 2016), available at <http://www.reuters.com/article/us-usa-pollution-report-specialreport-idUSKCN11Y1BH>.

⁴⁶ Ex. 33, Centers for Disease Control and Prevention, *Lead: Indiana Data, Statistics, and Surveillance* (2015), available at <https://www.cdc.gov/nceh/lead/data/state/indata.htm>. Notably, in 2015 leading up to the Superfund site evacuation, a mere 1,183 young children were screened in Lake County as a whole. In addition, a news article from November 2016 notes that a number of East Chicago residents at a housing complex outside the lead-contaminated clean-up site have been tested since July, and the results show elevated levels (though the city did not release the data). See Ex. 34, Nick Janzen, *More East Chicago Residents Have Elevated Blood Lead Levels*, Indiana Public Media (Nov. 21, 2016), available at <http://indianapublicmedia.org/news/east-chicago-residents-elevated-blood-lead-levels-109467/>.

⁴⁷ Ex. 35, U.S. Census Bureau, *2011-2015 American Community Survey 5-year Estimates* (2015), available at <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (enter “East Chicago, IN” in the box under “Community Facts,” click on “Income” on left-side bar, then click “Selected Economic Characteristics” under “2015 American Community Survey”).

persons of color than East Chicago as a whole, with even greater levels of poverty. Living in housing built before 1978 (when the federal ban on high-lead paint went into effect) is also a risk factor because dust from lead paint continues to be a major source of lead exposure in children.⁴⁸ Indiana's annual child lead surveillance report has identified over 80 percent of Lake County housing stock as built before 1980.⁴⁹ These factors show that the risks to East Chicago residents from lead exposure may be particularly acute, and to those living at the Superfund site even more disturbing. Adding contaminated water to these other significant sources of lead poses an exceptional cumulative threat to public health.

The monitoring data showing high lead levels in East Chicago drinking water, combined with the well-known serious adverse health impacts of lead exposure, demonstrate "a substantial likelihood that contaminants capable of causing adverse health effects will be ingested by consumers if preventive action is not taken."⁵⁰ These circumstances are particularly stark in this environmental justice community where the lead in drinking water has increased, and continues to increase, the cumulative exposure to residents facing the impacts of a Superfund site and other polluting facilities across the City and in neighboring areas, constituting an imminent and substantial endangerment warranting emergency federal action.⁵¹

IV. Neither the City nor the State Has Acted to Protect East Chicago Residents Across the City from Current and Continuing Health Risks of Exposure to High Lead Levels in Drinking Water

While various local, state and federal agencies are rightly focusing attention on addressing high levels of lead in soil at the Superfund site, neither the City nor the State is adequately

⁴⁸ Ex. 36, American Cancer Society, *Lead, Lead in the Environment* (last updated May 27, 2014), available at <http://www.cancer.org/cancer/cancercauses/othercarcinogens/athome/lead> (characterizing lead paint as a "major" source of exposure).

⁴⁹ Ex. 37, Indiana State Department of Health, Lead & Health Homes Program, *2013 Surveillance Report* (Mar. 2013) at 12, available at http://www.in.gov/isdh/files/2012_Lead_Report_4-5-13.pdf. We note that other versions of the annual surveillance report variably cite Lake County pre-1980 housing rates of "65% and higher" and "Between 50% and Less than 75%" (See Ex. 38, Indiana State Department of Health, Lead & Health Homes Program, *2015 Childhood Lead Surveillance Report* at 11, available at https://www.in.gov/isdh/files/Lead_Report_2015_w_reportable_disease.pdf and Ex. 39, Indiana State Department of Health, Lead & Health Homes Program, *2013 Surveillance Report* (June 2014) at 12, available at https://www.in.gov/isdh/files/Final_Lead_Report_2013.pdf).

⁵⁰ H.R. Rep. No. 93-1185, 1974 U.S.C.A.N. 6454, 6488 (July 10, Aug. 15, 1974) (defining when an endangerment may be considered substantial).

⁵¹ See *Trinity Am. Corp. v. U.S. E.P.A.*, 150 F.3d 389, 399 (4th Cir. 1998) (imminent and substantial endangerment found when "dangerous levels of [a] contaminant[] exist in [the] water supply," and that the contaminant "pose[s] a great risk to human health").

addressing the imminent and substantial threat to public health faced by residents in the entire city given the lead levels in their drinking water.⁵²

A. Recent attempts to improve corrosion control treatment do not render East Chicago's drinking water currently safe to drink

East Chicago's drinking water is unsafe to drink. The presence of high lead levels should be presumed unless and until studies demonstrate that the corrosion control treatment added in late 2016 is effectively reducing lead levels, and/or until lead service lines are replaced.

Forty percent of homes tested as part of EPA's study had elevated levels of lead, which EPA attributed to lead service lines and water sampling detecting "low or no orthophosphate levels."⁵³ EPA states on its website that "[a]fter EPA notified the city of East Chicago and the Indiana Department of Environmental Management about the elevated lead levels, the city boosted the amount of orthophosphate added at the water treatment plant," and that "[t]his step should coat the interior surfaces of plumbing materials and decrease the amount of lead released into the drinking water."⁵⁴ EPA further states that "[r]eplacing lead service lines is an effective but costly and time-intensive solution," and that "[i]ncreasing the orthophosphate level to coat the pipes and fixtures *is a more immediate solution.*"⁵⁵ However, the of East Chicago's water depends not simply on *whether* corrosion control treatment (e.g., orthophosphates) has been implemented, but rather, when the treatment is shown to be effectively reducing lead levels.

A new protective scale can take up to 12 months to form and depends on the characteristics of the water infrastructure.⁵⁶ As described in EPA's 1991 Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, also known as the Lead and Copper Rule ("Lead and Copper Rule" or "LCR"), "[m]ost lead contamination is from corrosion by-products."⁵⁷ Specifically:

⁵² See *id.* (explaining that "minor" and "ineffective" action by state and local authorities does not "strip EPA of its statutory emergency powers"); EPA OIG Management Alert (Ex. 49, *infra*), at 3 ("EPA may use its emergency authority even when a state is acting or is going to act.").

⁵³ See Ex. 5, January 2017 Kaplan letter, at 3. Furthermore, it is unclear whether and to what extent the East Chicago water system was implementing effective corrosion control treatment before EPA began the pilot study. According to news reports, "East Chicago changed the chemical it was using for corrosion control in September [2016] under guidance from [IDEM], which had been approached by EPA," and "IDEM and the city have been working since October [2016] to increase phosphate levels in the system, officials said." Ex. 2, Reese February water filters. According to a subsequent report, however, officials have said that "[t]he city began adjusting corrosion control chemical levels before EPA tested drinking water." Ex. 3, Reese school testing.

⁵⁴ Ex. 13, Pilot study website.

⁵⁵ *Id.* (emphasis added).

⁵⁶ See *Concerned Pastors for Social Action v. Khouri*, No. 16-10277, 2016 WL 6647348, at*3 (E.D. Mich. Nov. 10, 2016) (noting expert's opinion that "[a] new protective scale can take up to twelve months to form.").

⁵⁷ Lead and Copper Rule, at 26,463.

Lead in drinking water results primarily from corrosion of materials located throughout the distribution system containing lead and copper and from lead and copper plumbing materials used to plumb public- and privately-owned structures connected to the distribution system. The amount of lead in drinking water attributable to corrosion by-products depends on a number of factors, including the amount and age of lead and copper bearing materials susceptible to corrosion, how long the water is in contact with the lead containing surfaces, and how corrosive the water in the system is toward these materials.⁵⁸

The Emergency Order issued by EPA in Flint, Michigan, is instructive. In Flint, lead contamination in the drinking water occurred after officials switched Flint's water source from Detroit's pre-treated Lake Huron water to the corrosive Flint River, and subsequently failed to treat it to reduce the release of lead from pipes. After officials had eventually begun to treat the water with corrosion-inhibiting chemicals, EPA issued an Emergency Order, dated January 21, 2016, to provide oversight of the treatment. EPA indicated that "[n]otwithstanding the orthophosphate addition [added on December 9, 2015], *high levels of lead and other contaminants are presumed to persist in the City's water system until LCR optimization process, utilizing sampling and monitoring requirements, have confirmed lead levels have been reduced.*"⁵⁹ The Order concluded:

The lead and other contaminants will remain present in the [water system] and will continue to present an imminent and substantial endangerment to the health of persons until the underlying problems with the corrosion control treatment and fundamental deficiencies in the operation of the [water system] are corrected and sampling results confirm the lead and other contaminants are adequately treated.⁶⁰

Like Flint, the relevant inquiry regarding the potability of East Chicago's water is not simply whether corrosion control treatment has been implemented, but rather, whether the corrosion control treatment is shown to be effectively reducing lead levels. In other words, notwithstanding the addition of orthophosphates to the East Chicago water system in late 2016, high lead levels should be "presumed" and will "persist" until sampling and monitoring shows that levels have reduced.

Further, the type of corrosion control treatment fed into the water distribution system is a factor impacting whether (and when) the treatment will form and maintain a sufficiently robust scale to reduce on-going lead leaching. According to a report prepared by Crowley Engineering for the East Chicago Water Department, the specific type of corrosion treatment recommended by IDEM in September 2016 was an "orthophosphate-polyphosphate blend that is currently being fed at both plants to further improve the

⁵⁸ *Id.*

⁵⁹ Ex. 15, Flint emergency Order, at ¶ 21.

⁶⁰ *Id.* at ¶ 46.

control of lead leaching in customer service lines.”⁶¹ According to EPA’s own recent guidance, such “[b]lended phosphates have been shown to be effective for reducing lead levels; however, the lead corrosion scale may not be as robust as the scale created by orthophosphate and, thus, may be more susceptible to physical disturbances and low water use conditions.”⁶² EPA guidance further suggests that effectiveness of the treatment is likely dictated by the concentration of orthophosphates in the blend. As such, the use of blended orthophosphate is a factor as to whether and when the treatment will create a robust scale to reduce leaching lead.⁶³

In short, while it is promising that the water is now being treated to control for corrosion, the presence of lead should be presumed unless and until evidence reveals that the treatment is effectively reducing the levels of lead in the water. Absent such evidence, the use of corrosion control treatment alone does not necessarily indicate the water is *currently* safe to drink, given the results of the EPA pilot study, the nature of the corrosion control treatment being implemented and the timeframe needed for the corrosion control to take effect.

B. Neither the City nor the State has acted adequately to protect East Chicago from the continuing public health threat from exposure to lead in drinking water.

Neither the City nor the State has acted adequately to protect East Chicago from the continuing public health threat from exposure to lead in drinking water, including that no commitments have been made to provide city-wide access to safe drinking water in the short-term.

EPA’s pilot study revealed that 18 homes tested, or 40 percent of the total homes tested, had elevated levels of lead. As discussed above, although the pilot study included a relatively small number of homes, EPA itself concluded that these elevated lead levels are not isolated and indicate a “system-wide” issue based on the prevalence of lead service lines in the City and the lack of insufficient corrosion control treatment. In fact, despite the findings of elevated lead levels in the drinking water, EPA concluded that no further testing is necessary because the pilot study results are indicative of a “system-wide” problem.⁶⁴ EPA has publicly stated that all residents of East Chicago should assume the presence of lead service lines in their homes and to use certified water filters.⁶⁵ EPA has provided

⁶¹ Ex. 40, Crowley Engineering, LLC, *Preliminary Engineering Report: Water Distribution System Improvements*, Prepared for the East Chicago Water Department, at 8 (submitted Dec. 22, 2016) (“Engineering report”).

⁶² Ex. 41, U.S. EPA, *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primary Agencies and Public Water Systems*, at 47 (2016), available at <https://www.epa.gov/sites/production/files/2016-03/documents/occtmarch2016.pdf>.

⁶³ Ex. 40, Engineering report. Additional factors relating to the City’s water infrastructure may also impact the efficacy of the corrosion control treatment being used. For example, in 2015, East Chicago suffered a water loss of 35 percent, reflecting a higher loss than previous years. *Id.* at 15.

⁶⁴ Ex. 1, Pilot study FAQs.

⁶⁵ Ex. 2, Reese February water filters.

filters for pilot study participants, though not the entire city, and has recommended that pilot study participants continue to use filters for drinking, cooking and brushing teeth until further notice.⁶⁶ Yet no state, local or federal agency has taken any necessary measures to ensure that residents beyond these few homes currently have a source of clean, safe water. Further, the City has indicated publicly that it does not have sufficient resources to conduct further water testing, nor does it have the ability to replicate the EPA's testing methods, which would help identify those homes at highest risk.⁶⁷

The EPA study also raises factual questions regarding whether the City and State's efforts to date have in fact ensured a safe drinking water supply sufficient to protect the public health. Despite EPA's pilot study results showing elevated lead levels, for example, East Chicago does not appear on EPA's database listing violations of lead contamination.⁶⁸ This omission raises the question of whether East Chicago is in fact complying with treatment, reporting, and monitoring requirements of the Lead and Copper Rule.⁶⁹ Such questions are relevant where EPA estimates that 90 percent of homes in East Chicago have lead service lines, 40 percent of homes tested had elevated levels of lead, and EPA's conclusion that the pilot study lead levels revealed a "system-wide" problem.⁷⁰ Moreover, even if the City is fully compliant with applicable requirements for lead, EPA has acknowledged in the context of the pilot study that it is "actively considering potential revisions to the Lead and Copper Rule" at the national level, with the "primary goal [of improving] the effectiveness

⁶⁶ *Id.*

⁶⁷ Ex. 42, Lauren Cross and Sarah Reese, *East Chicago Lead Crisis: "Our Site is Parallel with Flint Now,"* Times of Northwest Indiana (Dec. 9, 2016), available at http://www.nwitimes.com/news/special-section/ec-lead/east-chicago-lead-crisis-our-site-is-parallel-with-flint/article_eb54256f-8511-54b4-913d-614fea555a53.html.

⁶⁸ This omission may illustrate another case of serious gaps in reporting, as was evidenced in Flint. See Ex. 43, Olson, Erik and Pullen-Fedenick, Kristi, NRDC, *What's In Your Water? Flint and Beyond* (2016), available at <https://www.nrdc.org/resources/whats-your-water-flint-and-beyond>.

⁶⁹ The City may also have a history of not complying with IDEM's orders on the use of corrosion control treatment at one of the City's filtration plants. East Chicago owns and operates two water treatment plants, the Aldis Avenue conventional filtration plant (built in 1929 and upgraded in 1964), and the Pennsylvania Avenue membrane filtration plant (built in 2011). Design and other flaws in the Pennsylvania Avenue plant delayed its ability to be fully operational, resulting in related litigation. In 2011, IDEM approved the use of a corrosion inhibitor for this plant, but due to a strainer pretreatment system performance failure during startup of the Pennsylvania plant operations in 2011, the inhibitor was not fed into the system until spring 2016. See Ex. 40, Engineering report, at 7-8.

⁷⁰ Despite federal requirements that water sampling be done at "high risk" locations, recent news articles have highlighted cities that have failed to do so. See, e.g., Ex. 44, Fonger, Ron, *Documents show Flint filed false reports about testing for lead in water*, Mlive (Nov. 12, 2015) (Flint), available at http://www.mlive.com/news/flint/index.ssf/2015/11/documents_show_city_filed_fals.html, and Ex. 45, Michael Hawthorne and Jennifer Richards, *Chicago often tests water for lead in homes where risk is low*, Chicago Tribune (Feb. 26, 2016) (Chicago), available at <http://www.chicagotribune.com/news/watchdog/ct-chicago-lead-pipes-water-testing-met-20160226-story.html>.

of the rule in reducing exposure to lead and copper from drinking water.”⁷¹ The emergency in East Chicago demonstrates the dire need for such improvements.

Finally, evidence suggests that IDEM has failed to ensure that the City is adequately treating the water to reduce lead levels sufficient to protect the public health. Upon information and belief, IDEM was aware that the City had not been implementing appropriate corrosion control before the pilot study took place. Specifically, EPA’s preliminary findings detected “low or no orthophosphate levels” which “were consistent with monthly operating reports East Chicago submitted to IDEM.”⁷² In other words, IDEM was well aware, or should have been well aware, that the City may not have been implementing appropriate corrosion control measures to ensure lead levels were reduced in East Chicago’s drinking water.⁷³ These facts, calling into question the City and States’ prior efforts to effectively reduce lead levels and the ongoing failure to ensure an alternate source of clean, safe water, support federal intervention.

V. EPA Has Authority to Issue an Emergency Order Here, as it Had in Flint

The Administrator has the opportunity to act now to protect East Chicago, to avoid delay resulting in irreversible and avoidable harm to the City’s residents. EPA Administrator Pruitt, in his confirmation hearing before the Senate Environment and Public Works Committee, stated: “[T]he Flint tragedy was a failure at every level of government,” and noted his personal disturbance that “EPA did not take action until long after [EPA] became aware of the elevated lead levels in Flint drinking water.”⁷⁴ He further stated that EPA did not do an adequate job in the instance of the Flint water crisis, and said: “If confirmed and faced with a similar situation, I would inform the state that EPA will take action if they fail to do so, and *use EPA’s emergency authority if the state fails to act.*”⁷⁵ He also stated that he would “commit to undertaking stronger EPA oversight and enforcement of drinking water rules.”⁷⁶ Likewise, then-presidential candidate Donald Trump stated while campaigning in

⁷¹ Ex. 1, Pilot study FAQs.

⁷² Ex. 5, January 2017 Kaplan letter, at 3.

⁷³ According to the Indiana Finance Authority, the use of corrosion control treatment is not consistently implemented in Indiana. “Though utilities serving the bulk of the [state’s] population consider or implement anti-corrosion methods, it is not clear as to how many utilities perform the treatment or do so consistently. Further investigation will be needed to understand the risks of lead in the State.” Ex. 46, Indiana Finance Authority, *Indiana’s Water Utilities: An Analysis of the State’s aging infrastructure* (Nov. 2016), at 13, available at <http://www.in.gov/ifa/files/IFA-Report-11-18-2016.pdf>.

⁷⁴ Ex. 47, *Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency: Hearing Before the Senate Comm. on Env’t and Public Works*, 115th Cong. (Jan. 18, 2017) (Questions for the Record for the Honorable E. Scott Pruitt), at 28-29 (emphasis added), available at https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf.

⁷⁵ *Id.* at 29 (emphasis added).

⁷⁶ *Id.*

regards to the Flint water crisis: “I think it’s a horror show that it was allowed to happen and. . .it should have never, ever been allowed to happen. That was really the problem.”⁷⁷

EPA now has the obligation to ensure that a similar failure that occurred in Flint does not take place under the current administration. Petitioners seek “temporary relief to provide . . . residents basic life necessities while the water crisis is resolved.”⁷⁸ If history serves a lesson, EPA should swiftly act on this petition.

In reviewing EPA’s failure to act promptly in the face of the Flint, Michigan water crisis, the EPA’s Office of Inspector General (“OIG”) issued guidance on October 20, 2016 clarifying EPA’s authority to issue emergency orders to protect the public. The OIG concluded that “EPA Region 5 had the authority and sufficient information to issue a SDWA Section 1431 emergency order to protect Flint residents from lead-contaminated water as early as June 2015,”⁷⁹ although the Agency did not act until late January 2016. In the case of East Chicago, EPA has sufficient information to issue an emergency order now. In rendering its conclusion regarding Flint, the OIG relied on the same factors that that are currently present in East Chicago and found that EPA had sufficient information that contamination may present an imminent and substantial endangerment to human health, namely: (1) test results that indicated a requirement for corrosion control, (2) information that the water system was not using adequate corrosion inhibitor, and (3) information that homes had lead levels that exceeded the federal action levels.⁸⁰ Further, the OIG concluded that EPA had sufficient information that the appropriate state and local authorities had not acted to protect the health of persons based on the State’s notice to EPA that no corrosion control had been in place. In short, the situation in East Chicago meets the same criteria that the OIG found authorized EPA to act in Flint pursuant to its emergency authority before it issued an emergency order in Flint.⁸¹

In sum, EPA has concluded that its own testing results establish that the elevated levels of lead are system-wide. Based on the results of the pilot study, EPA has recommended that East Chicago residents drink filtered tap water. Meanwhile, the Agency provided drinking water filters and cartridges only for those homes that participated in the pilot study.⁸² EPA is also aware of a pattern, described above, which raises questions as to the

⁷⁷ Ex. 48, Chad Livengood, *Trump to visit Flint ‘at some point’ in campaign*, Detroit News (Sept. 3, 2016), available at <http://www.detroitnews.com/story/news/politics/2016/09/03/trump-visit-flint-point-campaign/89830710/>.

⁷⁸ *Concerned Pastors for Social Action*, at *17 (granting preliminary injunction and ordering city and state officials to deliver bottled water door-to-door or to verify that a faucet filter is properly installed and maintained in the home).

⁷⁹ Ex. 49, EPA, Office of Inspector General, *Management Alert: Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public*, Report No. 17-P-0004 (Oct. 20, 2016), available at https://www.epa.gov/sites/production/files/2016-10/documents/epa_oig_20161020-17-p-0004.pdf.

⁸⁰ *Id.* at 4.

⁸¹ *Id.*

⁸² Ex. 13, Pilot study website.

appropriateness of the City and State's efforts to reduce lead levels. To date, no commitments have been made to provide immediate, short-term assistance to community members that will ensure their access to clean, safe water.⁸³ All of these facts demand federal intervention.

⁸³ Ex. 1, Pilot study FAQs.

VI. EPA Should Act Immediately to Address the Public Health Emergency Created by Lead in East Chicago's Drinking Water

Petitioners urge EPA to take all actions necessary to abate the endangerment presented by lead in East Chicago's drinking water.⁸⁴ At a minimum, Petitioners request that EPA:

- Immediately provide (or order the City and/or State to provide) East Chicago residents with free faucet filters that meet EPA standards and/or bottled water, prioritizing first the Superfund site as well as other portions of the City at the greatest risk of cumulative lead exposures;
- Implement a program to ensure that faucet filters are properly installed and maintained at residents' homes;
- Replace faucets in each East Chicago residents' home as needed;
- Expand blood lead level testing of children under age 7 who are enrolled in Medicaid or are otherwise at-risk for high lead levels, in coordination with other local, state and federal agencies;
- Immediately conduct city-wide testing of the drinking water, not just limited to the pilot study, to determine the actual extent of the contamination and to comply with all applicable federal and state laws;
- Use its authority under 40 C.F.R. §§ 142.19 and 141.82(i) to review IDEM's determinations concerning corrosion control requirements for the East Chicago water system;
- Ensure East Chicago's compliance with reporting, treatment and monitoring obligations under the Lead and Copper Rule; and
- Order any other additional relief that EPA determines in "necessary to protect the health" of East Chicago's residents from lead contamination in drinking water.

⁸⁴ See *Concerned Pastors for Social Action*, at *10 and *17 ("In modern society, when we turn on a faucet, we expect safe drinking water to flow out," noting that the "interim relief is intended to provide a rough substitute for the essential service that municipal water systems must furnish: delivery of safe drinking water at the point of use.").

VII. Conclusion

For the foregoing reasons, Petitioners respectfully request that EPA take the actions necessary to abate the imminent and substantial endangerment to East Chicago residents' health from lead contamination in their drinking water.

Dated: March 2, 2017

Respectfully Submitted,

_____/s/ Sherry Hunter

Sherry Hunter

Calumet Lives Matter

_____/s/ Carlyle Edwards

Carlyle Edwards

We the People for East Chicago

_____/s/ Maritza Lopez

Maritza Lopez

Akeeshea Daniels

Sara Jimenez

**East Chicago Calumet Coalition Community
Advisory Group (CAG)**

_____/s/ Reverend Cheryl Rivera

Reverend Cheryl Rivera

Thomas Frank

Community Strategy Group

_____/s/ Samuel Henderson

Samuel Henderson

Hoosier Environmental Council

_____/s/ Sam Love

Sam Love

Duneland Environmental Justice Alliance

_____/s/ Pastor Charles Streitmeier

Pastor Charles Streitmeier

**Northwest Indiana Federation of Interfaith
Organizations**

_____/s/ Reverend Willie D. Johnson

Reverend Willie D. Johnson

The Twin City Minister Alliance of East Chicago

_____/s/ Bishop Tavis Grant

Bishop Tavis Grant

**Greater First Baptist Church of East Chicago
Antioch Network of Church & Ministries**

_____/s/ Wanda Gordils

Wanda Gordils

**League of United Latin American Citizens (LULAC)-
Indiana Council**

_____/s/ Barbara Bolling-Williams

Barbara Bolling-Williams

Denise Abdul-Rahman

**NAACP / NAACP Indiana State Conference
Environmental and Climate Justice Program**

_____/s/ Sheilah Garland

Sheilah Garland

National Nurses United

_____/s/ Emily Benfer

Emily Benfer

**Loyola University Chicago School of Law's Health
Justice Project**

_____/s/ Kate E. Walz

Kate E. Walz

Emily Coffey

Sargent Shriver National Center on Poverty Law

/s/ Mark Templeton _____
Mark Templeton
**University of Chicago Law School's Abrams
Environmental Law Clinic**

/s/ Debbie Chizewer _____
Nancy Loeb
Debbie Chizewer
**Northwestern University Pritzker School of Law's
Environmental Advocacy Clinic**

/s/ Anjali Waikar _____
Anjali Waikar
Meleah Geertsma
Natural Resources Defense Council

APPENDIX A

Descriptions of Petitioners

Calumet Lives Matter

Calumet Lives Matter is a community organization that aims to bring East Chicago residents of the Superfund site together and connect them to the educational, social, economic and legal resources needed to address and defend their rights as they navigate tremendous disruptions and harm to their lives due to living on a hazardous waste site.

We the People for East Chicago

We the People for East Chicago (WTPFEC) is a community organization whose members are property owners and renters on the Superfund site and other residents and concerned citizens of East Chicago. WTPFEC fights for environmental and social justice and creates awareness about the needs of residents.

The East Chicago Calumet Coalition Community Advisory Group

The East Chicago Calumet Coalition Community Advisory Group (CAG), formed under the federal Superfund process pursuant to CERCLA, includes a diverse group of individuals living within the Superfund site who raise up resident voices to demand protection of their health and the environment by EPA, the State of Indiana, and the City. The CAG informs and updates residents about Superfund site activities.

Community Strategy Group

The Community Strategy Group is comprised of residents of the Superfund Site, their allies and advocates working collaboratively for justice. The Community Strategy Group is the strategic force organizing to impact public policy, and demand environmental, health, economic and racial justice for the East Chicago community adversely impacted by catastrophic lead and arsenic contamination.

Hoosier Environmental Council

The Hoosier Environmental Council (HEC) is Indiana's oldest and largest non-profit environmental advocacy organization, founded in 1983. HEC has been actively participating in advocating for lead service line replacement funding for East Chicago.

Duneland Environmental Justice Alliance

Duneland Environmental Justice Alliance is a multiracial, anti-racist grassroots organization in the Calumet industrial corridor of Northwest Indiana fighting for a healthy environment.

Northwest Indiana Federation of Interfaith Organizations

Northwest Indiana Federation of Interfaith Organizations (the "Federation") is a 25-year old faith-based, citizen led community-organizing network targeting Lake, Porter and LaPorte Counties of Indiana. Most of the Federation's efforts are in Gary, East Chicago and Hammond due to the high degree of poverty and unemployment, as well as underperforming public schools, in these cities.

The Twin City Minister Alliance of East Chicago

The Twin City Minister Alliance of East Chicago is a group of ministers that cross denominational, gender and cultural lines to do kingdom work and to enhance the life for people in our community.

Greater First Baptist Church of East Chicago

Greater First Baptist Church is a church that was founded in the West Calumet neighborhood and has served East Chicago for 60 years.

Antioch Network of Church & Ministries

Antioch Network of Church & Ministries is a global association of churches & ministries that works with the congregations in the areas of community development, social justice, and global missions.

League of United Latin American Citizens—Indiana Council

The Mission of the League of United Latin American Citizens (LULAC) is to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of Indiana.

NAACP / Indiana NAACP Environmental and Climate Justice Program

Environmental injustice, including the proliferation of climate change, has a disproportionate impact on communities of color and low income communities in the United States and around the world. The NAACP Environmental and Climate Justice Program was created to support community leadership in addressing this human and civil rights issue. The NAACP Indiana State Conference Environmental Justice Program is actively engaging and advocating for the East Chicago community. It is working with local, state and federal public officials, and faith-based groups to provide support as requested.

National Nurses United

National Nurses United (NNU) is the largest union of registered nurses in the country, representing over 180,000 registered nurses (RNs), including members in Indiana. NNU nurses have deployed across the country to work alongside frontline communities as they fight to restore, protect and heal their communities from the devastating impact of environmental injustice.

Loyola University Chicago School of Law's Health Justice Project

Loyola University Chicago School of Law's Health Justice Project works to achieve health equity and social justice on behalf of low-income individuals and families. Recognizing that lead poisoning can permanently disrupt a child's future and elevate the risk for life-long disease and disability, the Health Justice Project and its partners collaborated to provide support and resources to the East Chicago community in order to prevent further exposure to lead and arsenic hazards and subsequent poor health outcomes.

Sargent Shriver National Center on Poverty Law

The Sargent Shriver National Center on Poverty Law (“Shriver Center”) provides national leadership to promote justice and improve the lives and opportunities of people with low income. The Shriver Center advances laws and policies through litigation, legislative and policy advocacy, and administrative reform, to achieve economic, racial, and social justice for our clients. The Shriver Center represents certain current and former residents of the East Chicago Housing Authority’s West Calumet Housing Complex and the Calumet Lives Matter community organization.

University of Chicago Law School’s Abrams Environmental Law Clinic

The Abrams Environmental Law Clinic at the University of Chicago Law School is dedicated to addressing some of the most pressing environmental problems in our region and country. The Clinic challenges those who pollute illegally; fights for stricter permits; holds environmental agencies accountable; and develops innovative approaches for protecting and improving the environment. The Abrams Environmental Law Clinic represents the interests of We the People for East Chicago and Calumet Lives Matter in the Motion to Intervene.

Northwestern University Pritzker School of Law’s Environmental Advocacy Clinic

The Environmental Advocacy Center (EAC) of the Northwestern University Pritzker School of Law provides legal services and representation to communities threatened by environmental harms, particularly environmental justice communities in mid-Western states. EAC also defends and advocates on critical environmental protection and environmental health issues. EAC represents We the People for East Chicago and Calumet Lives Matter in the Motion to Intervene, and represents the CAG.

Natural Resources Defense Council

The Natural Resources Defense Council (NRDC) is an international, nonprofit environmental organization that engages in research, advocacy, and litigation to protect public health and reduce the exposure of all communities to toxic substances, including lead exposure. NRDC’s work includes advocacy aimed at ensuring that all Americans have access to safe and affordable drinking water that is free from dangerous contaminants. Founded in 1970, NRDC has several hundred thousand members nationwide, including members in East Chicago, Indiana.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/21/2017 6:06:30 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

Message

From: Albores, Richard [Albores.Richard@epa.gov]
Sent: 4/27/2017 11:15:00 AM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]
Subject: FYI: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

Kevin:

ACOEL anticipates having a luncheon meeting on May 3 to meet the new team, and hear about EO implementation (Carol Ann's public statements) and other policy changes (perhaps WOTUS action). They will not be providing any advice/recommendations.

The location is to be determined still. Carla can you make sure Justin, David and Carol Ann are on the calendar hold?

Thanks

Sent from my iPhone

Begin forwarded message:

From: "Garrett, Theodore" <tgarrett@cov.com>
Date: April 26, 2017 at 9:00:13 PM EDT
To: "Albores, Richard" <Albores.Richard@epa.gov>
Subject: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

Thanks. We are also set for a noon luncheon meeting on May 3. As noted in my prior e-mail (see third bullet below), for legal reasons we prefer not to have a specific list of topics on which EPA seeks to elicit advice or recommendations. I will tell our members simply that they can expect a discussion of certain recent policy statements that OGC is prepared to address.

Early next week I will provide more details about the venue. I expect it will be in the office of one of our members close to EPA HQ. In the meantime, do not hesitate if you have further thoughts or questions. Best, Ted

From: Garrett, Theodore
Sent: Friday, March 24, 2017 10:26 AM
To: Albores, Richard
Cc: Minoli, Kevin
Subject: ACOEL/EPA GC

Richard: It was good to talk to you yesterday about re-engaging with ACOEL. The following are some thoughts for your consideration concerning the agenda and ground rules for the meeting:

- <!--[if !supportLists]--><!--[endif]-->The first part of the meeting will be a “meet and greet,” discussing the history of the relationship between OGC and the College.
- <!--[if !supportLists]--><!--[endif]-->After introductions, there would also be a review by OGC of recent policy statements and orders you are prepared to discuss. Only public information will be discussed.
- <!--[if !supportLists]--><!--[endif]-->We do not want to violate or even implicate the Federal Advisory Committee Act, so the purpose of the meeting would not be to elicit advice or recommendations. However, if during the course of the meeting, or afterwards, you conclude that input from ACOEL members would be useful, we will be happy to consider that with our members and get back to you.
- <!--[if !supportLists]--><!--[endif]-->The meeting will be off the record. We will let College members know that the meeting took place, so it will not be a secret meeting, but the substance of the discussions will be treated as confidential.
- <!--[if !supportLists]--><!--[endif]-->We will meet in person, but some College members would be interested in participating by telephone, if you are comfortable with such an arrangement.
- <!--[if !supportLists]--><!--[endif]-->ACOEL members will be there as individuals and will not be representing their firms or the College.

Let’s talk again after you have a chance to consider this further. Best, Ted

Theodore Garrett

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5398 | tgarrett@cov.com
www.cov.com

From: Albores, Richard [<mailto:Albores.Richard@epa.gov>]
Sent: Wednesday, April 26, 2017 5:44 PM
To: Garrett, Theodore
Subject: RE: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

Ted,

We are penciled in, and are fine with phone participants. Wondering if the conversation might revolve around your colleagues thoughts on the 2 for 1 de-regulatory Executive Order? We could have Carol Ann Siciliano, our Associate for Cross Cutting Issues present what is on-going, and get your feedback on legal obstacles you all might have thought of.

Let me know, as soon as possible, so we can get this set up.

R

~~~~~  
RICHARD L. ALBORES

Associate Deputy General Counsel \* Office of General Counsel \* U.S. EPA \* 1200 Pennsylvania Avenue, NW \* MC2310A \* Washington, DC 20460 \* email: [albores.richard@epa.gov](mailto:albores.richard@epa.gov) \* phone: 202.564.7102 \* mobile: Personal Phone / Ex. 6

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**From:** Garrett, Theodore [<mailto:tgarrett@cov.com>]  
**Sent:** Wednesday, April 19, 2017 12:38 PM  
**To:** Albores, Richard <[Albores.Richard@epa.gov](mailto:Albores.Richard@epa.gov)>  
**Subject:** RE: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

Let's pencil in May 3 at noon. Let me know if you are comfortable with some folks participating by telephone. What duration you have in mind? Also, do you have in mind a lunch meeting or would you prefer that folks get lunch on their own before or after the meeting? Best, Ted

---

**From:** Albores, Richard [<mailto:Albores.Richard@epa.gov>]  
**Sent:** Wednesday, April 19, 2017 11:05 AM  
**To:** Garrett, Theodore  
**Subject:** FW: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

Ted – how does April 26 or May 3 look for ACOEL around the noon hour? Is this something you can host downtown?

R

~~~~~  
RICHARD L. ALBORES

Associate Deputy General Counsel * Office of General Counsel * U.S. EPA * 1200 Pennsylvania Avenue, NW * MC2310A * Washington, DC 20460 * email: albores.richard@epa.gov * phone: 202.564.7102 * mobile:

Personal Phone / Ex. 6

From: Veney, Carla
Sent: Thursday, April 13, 2017 11:28 AM
To: Albores, Richard <Albores.Richard@epa.gov>; Patrick, Monique <Patrick.Monique@epa.gov>; Jones, Gail-R <Jones.Gail-R@epa.gov>
Subject: RE: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

I would propose Wednesday, April 26 or Wednesday, May 3 for Kevin.

From: Albores, Richard
Sent: Wednesday, April 12, 2017 2:31 PM
To: Veney, Carla <Veney.Carla@epa.gov>; Patrick, Monique <Patrick.Monique@epa.gov>; Jones, Gail-R <Jones.Gail-R@epa.gov>
Subject: SCHEDULING: American College of Environmental Lawyers (Theodore Garrett and Co.)

Hi all:

Can we find a Wednesday and a Friday in the week of April 24 or the May 1 for Kevin/Justin/David to meet the ACOEL reps for the lunch hour in DC (location to be determined)?

Let me know, and I will see which works better for ACOEL.

R

~~~~~  
**RICHARD L. ALBORES**

Associate Deputy General Counsel \* Office of General Counsel \* U.S. EPA \* 1200  
Pennsylvania Avenue, NW \* MC2310A \* Washington, DC 20460 \* email:  
[albores.richard@epa.gov](mailto:albores.richard@epa.gov) \* phone: 202.564.7102 \* mobile: Personal Phone / Ex. 6

**From:** So, Katherine [so.katherine@epa.gov]  
**Sent:** 2/22/2017 8:11:49 PM  
**To:** McGonagle, Kevin [mcgonagle.kevin@epa.gov]; McCabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO\_OPA\_Media\_Relations@epa.gov]  
**CC:** So, Katherine [so.katherine@epa.gov]  
**Subject:** RE: Administrator Pruitt Clips 2/22/17

*Below: Reuters, Politico, Washington Post, Yahoo News, Washington Examiner, BuzzFeed News, AP, E&E News, InsideEPA, Fox News, MSNBC, The Guardian, Washington Times, The Verge, Bloomberg, Bloomberg BNA, Washington Post, Wall Street Journal, New York Times, Mother Jones, Bloomberg BNA, Politico Pro, E&E News (3), The Hill, AP (2/21), InsideClimate News (2/21), Mother Jones (2/21), Morning Consult (2/21)*

#### **Reuters**

<http://www.reuters.com/article/usa-trump-pruitt-idUSL1N1G716V>

#### **Oklahoma releases emails between new EPA head and energy firms**

By Timothy Gardner 2/22/17, 1:54PM

Emails released by the Oklahoma attorney general's office show a cozy relationship between energy companies and Scott Pruitt, who was the state's top prosecutor before being sworn in last week as the new chief U.S. environmental regulator, a media watchdog group said on Wednesday.

The Center for Media and Democracy has sought the release of emails between energy companies and Pruitt for the past two years, saying they show energy companies drafted language that Pruitt's attorney general office then used in suing the U.S. Environmental Protection Agency, the office he now heads, over regulations on energy operations.

The center had sued Pruitt on Feb. 7, ahead of the Senate vote to confirm his nomination by President Donald Trump, to release the records detailing his communications with energy companies.

The attorney general's office released more than 7,500 pages of emails late on Tuesday, holding back an unknown number of documents it called exempted or privileged. Oklahoma Judge Aletia Timmons is reviewing those documents, but there is no set time for when or if they would be released.

Among the documents released were communications between Devon Energy and Pruitt's office that suggest the company gave the Oklahoma officials language on limits on methane emissions at oil and gas operations. Pruitt's office then used this language in suing the EPA over the regulations, the documents suggest. ([bit.ly/2lFEymC](http://bit.ly/2lFEymC))

The EPA did not immediately respond to requests for comment.

Devon serves as a resource with information and expertise for decision makers, and its contact with Pruitt was consistent with its policy of engaging with policymakers, company spokesman John Porretto said.



Nick Surgey, a research director at the Center for Media and Democracy, called the document release a "major breakthrough" that revealed a close and friendly relationship between Pruitt's office and the oil and gas industry, with frequent meetings, calls, and dinners.

The center said before the release of the emails that Pruitt's office had violated Oklahoma's Open Records Act by delaying their issuance.

Critics of Pruitt's nomination to head the EPA were concerned over his record on the environment - he sued the agency more than a dozen times on behalf of his oil-producing state and has doubted the science of climate change - and Democrats in the Senate held an all night debate last week trying to stop his confirmation vote until the emails were released. He was confirmed on Friday with two Democrats from energy-producing states voting for him.

A spokesman at the Oklahoma attorney general's office would not say how many documents were sent to the judge for review or how it decided which ones to fully release. The office went "above and beyond" what is required under the Open Records Act by producing records that would typically be considered ones outside the law's scope, the office said in a release.

### **Politico**

<http://www.politico.com/story/2017/02/scott-pruitt-epa-emails-oil-gas-industry-235269>

#### **Pruitt emails show close ties to oil, gas interests**

By Alex Guillen 2/22/17, 2:24PM

Thousands of newly released emails show the close, casual relationship between the oil and gas industry and new Environmental Protection Agency Administrator Scott Pruitt, who in his former role as Oklahoma attorney general led the legal fight to derail many of the pollution regulations opposed by the energy industry.

None of the communications, most of which were sent by Pruitt's staff in 2013 and 2014, appear to reveal any illegal activities, and Pruitt's alliance with fossil fuel companies and conservative groups like the Koch-connected Americans for Prosperity has been public knowledge for years. But they do underscore the dramatic shift EPA is likely to see under Pruitt, who on Tuesday told EPA employees in his first address as administrator that "regulators exist to give certainty to those that they regulate."

And many of the regulations discussed in the emails still sit before EPA today, putting them squarely in Pruitt's lap.

The release of the emails was ordered by a state judge last week, and the more than 7,500 pages were made public just days after the Senate confirmed Pruitt to head the agency in a mostly party-line vote that Democrats had sought to delay.

"There is no valid legal justification for the emails we received last night not being released prior to Pruitt's confirmation vote other than to evade public scrutiny," said Arn Pearson, general counsel for the Center for Media and Democracy, the group that asked for the communications two years ago. "There are hundreds of emails between the AG's office, Devon Energy and other polluters that senators should have been permitted to review prior to their vote to assess Pruitt's ties to the fossil fuel industry."

A spokesman for the state attorney general's office said on Wednesday that some of these emails had been released previously to The New York Times, which cited them in a 2014 story on Pruitt's "secretive alliance" with oil and gas companies. He referred POLITICO to a Tuesday statement saying the AG's office went "above and beyond" the state's open records law in releasing so many communications.

Pruitt's closest ally in the energy sector appears to be Oklahoma City-based Devon Energy, one of the largest oil producers in the U.S. It authored a letter on methane emissions that Pruitt largely copied and sent to EPA.

The new emails show several communications between Pruitt's staff and Devon, in particular Bill Whitsitt, formerly the company's executive vice president for public affairs. Whitsitt, now retired, sent a draft letter to Pruitt aides in May 2013 that he hoped would be sent by a bipartisan group of attorneys general to EPA to counter a petition from Northeastern states seeking tighter methane regulations.

"It would be a shot across the bow, warning EPA not to go down a negotiated-rulemaking or wink-at-sue-and-settle tee-up process," Whitsitt wrote.

"It seems to me this would also be a logical outgrowth of the fossil energy AGs meeting and could be powerful with a number of signers. It is also the kind of thing that in the future could be run through the clearinghouse we discussed," he added, in apparent reference to the alliance The New York Times story cited in 2014.

In May 2013, Pruitt's deputy solicitor general, Clayton Eubanks, asked Whitsitt for feedback on a draft letter to EPA regarding methane emissions. Eubanks specifically asked for advice on incorporating an EPA report that found initial estimates of methane emissions from certain source categories were too high.

Whitsitt responded with various suggested changes, including some that were "improvements from one of our experts." Neither of Whitsitt's documents with suggested improvements was included in the released emails.

A month later, in June 2013, Whitsitt wrote to Pruitt's chief of staff, Melissa Houston, to thank her for including him in a meeting that day with Pruitt. "I think we got to a good place with respect to the clearinghouse concept to assist AGs in addressing federalism issues," he wrote, again referencing the alliance.

Houston responded: "I am very excited about this project moving forward and feel that we are on the right track. This will be an amazing resource for the AGs and for industry. I so appreciate you providing your expertise and guidance as we move forward."

Whitsitt also replied to Eubanks' questions on the Bureau of Land Management's proposed fracking rule. Whitsitt noted the White House was reviewing the proposal, "hence our asks that calls be made to the head of OMB and/or OIRA pretty quickly." He included a leaked copy of the BLM proposal.

Brent Rockwood, another top Devon executive, in July 2013 followed up on an attorneys general letter regarding the fracking rule. Devon's legal team had recommended including footnotes to source facts and legal arguments, Rockwood wrote.

"Thanks for putting the AG letter into action, and I think that this letter will make a strong statement and a real difference. Do you think that we will get any Democrats to sign the letter?" he asked.

Devon was not the only company to benefit from working with Pruitt. Stuart Solomon, president of AEP's utility subsidiary Public Service Co. of Oklahoma, wrote to Pruitt in February 2014 thanking him for helping the company deal with EPA on a regional haze issue.

"Your lawsuit against EPA, and your encouragement of our efforts to settle this issue in a way that benefits the state, were instrumental in giving us the time and the opportunity to develop a revised state plan," thus avoiding an EPA-imposed federal plan, Solomon wrote.

In August 2013, Peter Glaser, a Washington attorney from the law firm Troutman Sanders who represented Arizona in a haze lawsuit, sent Pruitt's office a rough draft of a friend-of-the-court brief on that issue. Glaser sought to make sure his brief and one being prepared by Pruitt's office did not duplicate arguments, and he asked for advice on other arguments to make.

Pruitt also waded into ethanol issues in summer 2013.

Rich Moskowitz, general counsel for American Fuel & Petrochemical Manufacturers, briefed Pruitt's aides on the Renewable Fuel Standard, which Eubanks wrote has "obvious shortcomings and problems." AFPM and the American Petroleum Institute at the time were preparing to ask EPA for a waiver from the congressionally required mandates

because of concerns the amount of ethanol required by law could not be blended into the gasoline expected to be sold in 2014.

Moskowitz urged Pruitt to file his own waiver request pushing the argument that high ethanol blending mandates would cause "severe environmental harm" because "this argument is more credible coming from a state" that has to meet national air-quality standards.

EPA did ultimately ease the corn ethanol mandate for the first time when it issued a rule covering 2014, although it cited distribution concerns, not potential environmental harm.

CMD said it plans to ask the judge reviewing the case to verify that Pruitt's private email address is searched as well after a redacted address for Pruitt was copied on several emails. Pruitt told lawmakers at his confirmation hearing that he does not use his personal address for work.

More communications from subsequent CMD records requests are expected next week.

### **Washington Post**

[https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm\\_term=.a2eec9c649d6](https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm_term=.a2eec9c649d6)

### **Thousands of emails detail EPA head's close ties to fossil fuel industry**

By Brady Dennis and Steven Mufson 2/22/17 2:55PM

In his previous role as Oklahoma's attorney general, the Environmental Protection Agency's new administrator regularly huddled with fossil fuel firms and electric utilities about how to combat federal environmental regulations and spoke to conservative political groups about what they call government "overreach," according to thousands of pages of emails released Wednesday.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners and other events," said Nick Surgey, research director for the Center for Media and Democracy, which has sued to compel the release of the emails.

The emails highlight an often-chummy relationship between Pruitt's office and Devon Energy, a major oil and gas exploration and production company based in Oklahoma City. The correspondence makes clear that top officials at the company met often with Pruitt or people who worked for him. Devon representatives also helped draft — and re-draft — letters for Pruitt to sign and send federal officials in an effort to stave off new regulations.

"Any suggestions?" a deputy solicitor general in Pruitt's office wrote to a Devon executive in early May 2013, including a draft of a letter the office was planning to send to the EPA regarding proposed regulations of methane emissions.

"Here you go," the executive, Bill Whitsitt replied. "Please note that you could use just the red changes, or both red and blue (the latter being some further improvements from one of our experts) or none."

"I sent the letter today," the deputy solicitor general wrote the following day. "Thanks for all your help on this."

The emails show that Pruitt and his office were in touch with a network of ultra-conservative groups, many of which in the past have received backing from billionaire brothers Charles G. and David H. Koch, the libertarian owners of Koch Industries, a major oil company. The documents detail not only how Pruitt's office at times coordinated with industry officials to fight unwanted regulations from Washington, but also how he was a highly sought after speaker at conferences and other gatherings for groups such as the American Legislative Exchange Council, which works with corporate interests and state legislators to shape key pieces of legislation.

In one example, Pruitt was a speaker at an ALEC conference on May 3, 2013, in Oklahoma City. He was part of a panel called, "Embracing American Energy Opportunities: From Wellheads to Pipelines." The event also featured a reception at the Petroleum Club and a luncheon sponsored by Koch Industries.

The Oklahoma attorney general's office handed over the batch of emails — nearly 7,000 pages in all — this week in order to meet a deadline set by a judge who ordered the documents' release following more than two years of effort by CMD, a liberal watchdog organization. The group had sued to compel the state to release the documents under public records laws. (The emails can be viewed [here](#).)

Though the emails show Pruitt's ties with a wide range of fossil fuel interests and conservative political groups, they show a particularly close relationship with Devon Energy, a major oil and gas exploration and production company based in Oklahoma City. Much of the correspondence revolves around arranging speaking engagements, obtaining contact information for people at the federal Office of Management and Budget and coordinating letter-writing efforts.

At one point, Pruitt's then-chief of staff, Melissa Houston, wrote in a Jan. 9, 2013, email to Whitsitt, Devon's vice president for public affairs, "You are so amazingly helpful!!! Thank you so much!!!"

In another email chain on March 21, 2013, Whitsitt wrote to Pruitt's office offering a draft of a letter that state attorneys general might sign and send to the then-acting EPA administrator regarding limits on methane emissions. Devon, which has substantial shale gas and shale oil drilling operations, would have been affected by the rule.

"Attached is a potential first-cut draft of a letter a (bipartisan if possible?) group of AGs might send to the acting EPA administrator and some others in the Administration in response to the NE states' notice of intent to sue for more E&P emission regulation," Whitsitt wrote. "It would be a shot across the bow, warning EPA not to not go down a negotiated-rulemaking or wink-at-a sue-and-settle tee-up process."

The company vice president gave strategic advice, too. "If sent, I'd suggest that it be made public, at least to the Hill and to policy community publications," he wrote. "It seems to me this would also be a logical outgrowth of the fossil energy AGs meeting and could be powerful with a number of signers. It is also the kind of thing that in the future could be run through the clearinghouse we discussed. Please let me know what you and General Pruitt think, or if we can help further."

That same month, Whitsitt also offered a draft of a letter for Pruitt to sign about the federal Bureau of Land Management's revised proposal of a rule on hydraulic fracturing, a drilling technique that has helped U.S. companies like Devon sharply expand output and profits. Following up on his conversations with Pruitt, Whitsitt suggested a meeting "or perhaps more efficient, a conference call" with OMB officials.

"The attached draft letter (or something like it that Scott if comfortable talking from and sending to the acting director to whom the letter is addressed) could be the basis for the meeting or call," he wrote. Pruitt's chief of staff replied: "Thanks Bill — we will take a look and start working on a draft."

Pruitt's close ties to Devon Energy were first highlighted in 2014 by the New York Times, which reported that a letter ostensibly written by the attorney general alleging that the EPA overestimated air pollution from natural gas drilling was actually written by the company's attorneys. "That's actually called representative government in my view of the world," Pruitt later said of the letter.

The emails' release comes just days after Pruitt was confirmed as the EPA's new leader. Senate Democrats and environmental groups made a last-minute push to delay his confirmation vote last week, contending that lawmakers — and the public — ought to be able to review his correspondence with industry officials before putting him in charge of safeguarding the nation's environment. Republicans forged ahead anyway, and Pruitt was confirmed by a 52-to-46 vote.

In a statement Tuesday, the Oklahoma attorney general's office said it "went above and beyond what is required under the Open Records Act and produced thousands of additional documents that, but for the Court's order, would typically be considered records" outside the scope of the act. "This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of the Attorney General remains fully committed to the letter and spirit of the Open Records Act," spokesman Lincoln Ferguson said.

Pruitt's office at EPA did not immediately respond to a request for comment on Wednesday.

In an email, Devon Energy spokesman John Porretto said that the company's engagement with Pruitt during his time as attorney general was "consistent – and proportionate – with our commitment to engage in conversations with policymakers on a broad range of matters that promote jobs, economic growth and a robust domestic energy sector." He added, "We have a clear obligation to our shareholders and others to be involved in these discussions related to job growth, economic growth and domestic energy...It would be indefensible for us to not be engaged in these important issues."

Environmental groups on Wednesday were quick to criticize Pruitt, arguing the emails showed once again his penchant for putting with the interests of industry over the health of ordinary citizens.

"This is Scott Pruitt's mission statement: attack environmental safeguards, protect industrial polluters and let the public pay the price," Rhea Suh, president of the Natural Resources Defense Council, said in a statement. "These emails tell us that he's in league with the very industries we've now entrusted him to police. He so deeply imbedded himself with energy companies that they described Pruitt and his allies as 'fossil fuel AGs,' a badge of dishonor for a public guardian if ever there were one."

The Oklahoma attorney general's office withheld some documents as exempted or privileged and has asked Judge Aletia Haynes Timmons to review whether they should be released, according to the Center for Media and Democracy. Timmons also ordered Pruitt's former office to hand over records related to five outstanding records requests by early next week.

After unsuccessfully seeking the release of Pruitt's correspondence with fossil-fuel representatives under public records laws, the center filed suit over his refusal to turn over the documents and requested the expedited hearing that led to Timmons's order on Thursday. In her ruling, the judge said there had been "an abject failure to provide prompt and reasonable access to documents requested."

Pruitt sued the EPA more than a dozen times during the Obama administration, challenging the agency's authority to regulate toxic mercury pollution, smog, carbon emissions from power plants and the quality of wetlands and other waters. During his tenure in Oklahoma, he dismantled a specialized environmental protection unit that had existed under his Democratic predecessor and established a "federalism unit" to combat what he called "unwarranted regulation and systematic overreach" by Washington.

These moves earned him widespread opposition from environmental activists but praise from fellow Republicans and industry representatives, who saw him as a friend to businesses and a staunch opponent of federal regulations they called unnecessary and burdensome.

On Tuesday, Pruitt addressed EPA employees for the first time as their new boss. He spoke of stepping back from the aggressive regulations of recent years and said there needn't be a contradiction between environmental protection and energy production or job creation.

"We as an agency and we as a nation can be both pro-energy and jobs and pro-environment," he said. "We don't have to choose between the two."

#### **Yahoo News**

<https://www.yahoo.com/news/epa-chief-pruitts-new-emails-show-deep-ties-to-fossil-fuel-interests-184053662.html>

#### **EPA chief Pruitt's newly released emails show deep ties to fossil fuel interests**

By Michael Walsh 2/22/17

A batch of 7,564 pages of emails and other records from Scott Pruitt's tenure as Oklahoma attorney general — made public Wednesday morning — show that he worked with the fossil fuel industry in its efforts to roll back environmental regulations.

The documents were handed over to the Center for Media and Democracy (CMD) Tuesday night as a result of an Open Records Act request and lawsuit. Many liberals and environmentalists are outraged that the records were withheld until after Pruitt's confirmation as administrator of the Environmental Protection Agency (EPA) on Friday.

CMD said a number of documents were redacted, and additional documents are still being withheld as "exempted or privileged." The attorney general's office has been ordered to hand over records related to five other CMD requests by Feb. 27, according to the watchdog organization.

Nick Surgey, a research director at CMD, said Pruitt and the attorney general's office tried multiple times to have the records request scuttled.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners and other events," Surgey said in a statement. "And our work doesn't stop here — we will keep fighting until all of the public records involving Pruitt's dealings with energy corporations are released."

CMD focused on several exchanges that appear to confirm what critics have long said about Pruitt: He was willing to use his elective office as a mouthpiece for the fossil fuel industry.

In 2013, The American Fuel & Petrochemical Manufacturers (AFPM), a trade association for the fossil fuel industry, worked with Pruitt's office to oppose the EPA's Renewable Fuel Standard Program (RFS), which requires a certain volume of renewable fuel to replace heating oil or petroleum-based fuel for transportation. AFPM provided Pruitt with the language to file an Oklahoma petition against the RFS, noting that "this argument is more credible coming from a State."

Other emails show more evidence of Pruitt's close relationship with the oil and gas production company Devon Energy. In 2014, New York Times reporter Eric Lipton exposed how Devon Energy would draft letters Pruitt would send out on his state government letterhead. A newly uncovered email shows the energy corporation helping Pruitt write a letter to the EPA about limits on methane emissions.

There's an August 2013 email from Matt Ball, an executive at Americans for Prosperity, a conservative advocacy group funded by the Koch brothers, thanking Pruitt and others for "all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states."

Last week, an Oklahoma County district judge criticized Pruitt's "abject failure" to abide by the state's Open Records Act by improperly withholding public records and ordered the attorney general's office to release thousands of emails by Tuesday, the day of his inaugural speech as EPA administrator.

Though the ruling drew attention to Pruitt's relationships within the traditional energy sector, there was tremendous pushback from progressives and environmentalists the moment President Trump nominated him to lead the EPA — an agency he sued more than a dozen times.

Environmentalists say that Pruitt's history of alliance with the fossil fuel industry runs counter to the EPA's mission of limiting pollution and protecting public health. Oil and gas companies contend that the Obama administration and the EPA's efforts to protect the environment amount to government overreach and place undue regulations on their industry.

During his inaugural address, Pruitt argued that choosing between supporting jobs and the environment is a false dilemma — although without mentioning the renewable energy industry, which environmentalists say provides jobs while limiting carbon-dioxide emissions.

"We as an agency and we as a nation can be both pro-energy and jobs, and pro-environment. That we don't have to choose between the two," Pruitt said in his address to EPA staff. "I think our nation has done better than any nation in the world in making sure that we do the job of protecting our natural resources and protecting our environment, while also respecting the economic growth and jobs our nation seeks to have."

On Wednesday morning, the Natural Resources Defense Council filed a Freedom of Information Act request for materials and communications related to the drafting of a press release issued by the EPA on the day Pruitt's appointment was confirmed. The statement was filled with criticism of the agency's activities and policies under the previous administration, calling it "tone deaf" and a "runaway bureaucracy largely out of touch with how its policies directly affect folks like cattle ranchers." Rep. Jim Bridenstine, R-Okla., for instance, is quoted calling the EPA "one of the most vilified agencies in the 'swamp' of overreaching government."

Neither the EPA nor the Oklahoma attorney general's office responded to requests from Yahoo News for comment.

#### **Washington Examiner**

<http://www.washingtonexaminer.com/emails-show-close-relationship-between-pruitt-fossil-fuel-industry-activist-group-says/article/2615468>

#### **Emails show 'close' relationship between Pruitt, fossil fuel industry, activist group says**

By John Siciliano 2/22/17, 1:15PM

Activists released more than 7,500 emails Wednesday that they say showed the fossil fuel industry's influence over new Environmental Protection Agency Administrator Scott Pruitt.

The emails were released by the Oklahoma Attorney General's office Tuesday night in compliance with an emergency court order issued Thursday. Pruitt was the state's attorney general until Friday, when he was sworn in as the nation's 14th EPA administrator.

The bulk of the emails was sent to the Center for Media and Democracy, which petitioned the court after waiting two years for the emails to be released by Pruitt's former office under normal public release channels.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners and other events," said Nick Surgey, the research director for the group, vowing to continue to press Pruitt's office to release all communications between the new EPA chief and the energy industry.

The 7,564 emails that were released are only a small portion of what the group had requested over the last two years. "We will keep fighting until all of the public records involving Pruitt's dealings with energy corporations are released — both those for which his office is now asserting some sort of privilege against public disclosure and the documents relevant to our eight other Open Records Act requests," Surgey said.

Democratic senators on the Environment and Public Works Committee had petitioned the court in Oklahoma to order the records released in the run-up to Pruitt's confirmation vote last week. The Democrats attempted to use the court order to delay the vote until after they had time to sort through the emails.

But the Republican leadership ignored the requests, saying Pruitt had answered hundreds of questions and complied with the Senate confirmation process.

The top Democrat on the environment committee, Sen. Tom Carper, D-Del., said he was disappointed that the leadership did not wait for the emails to be released before holding the vote confirming Pruitt.

Although the refinery group "was making its own case against the RFS with the American Petroleum Institute, it provided Pruitt with a template language for an Oklahoma petition, noting 'this argument is more credible coming from a state,'" the group said. "Later that year, Pruitt did file opposition to both the RFS and ozone limits."

The group also underscored an email from fracking giant Devon Energy, which showed the company helped Pruitt "draft language that was later sent by Pruitt to the EPA about the limiting of methane from oil and gas fracking."

"In 2013, Devon Energy organized a meeting between Scott Pruitt, Leonard Leo of the Federalist Society and coal industry lawyer Paul Seby to plan the creation of a 'clearinghouse' that would 'assist [attorneys general] in addressing federalism issues,'" the group said of the emails it received. "Melissa Houston, then Pruitt's chief of staff, emailed Devon Energy saying 'this will be an amazing resource for the AGs and for industry.'"

The emails do not purport to show anything illegal on the part of Pruitt and his office over the meetings and discussions included in the emails. The group does say that last week's court decision shows that the attorney general office's withholding of the records was in "violation of the state's Open Records Act for improperly withholding responsive public records and ordered his office to release thousands of emails in a matter of days."

Carper underscored that point in a statement before the Senate voted on Pruitt's nomination, saying the judge scolded Pruitt's office for its "abject failure" in abiding by the state's public records law.

#### **Buzzfeed News**

[https://www.buzzfeed.com/dinograndoni/pruitt-epa-emails?utm\\_term=.bxy1d8Rkd#.dhV5Ak3DA](https://www.buzzfeed.com/dinograndoni/pruitt-epa-emails?utm_term=.bxy1d8Rkd#.dhV5Ak3DA)

#### **Thousands of Pages of Emails From Trump's New EPA Chief Have Been Released**

By Dino Grandoni 2/22/17, 2:07PM

A day after Scott Pruitt, President Trump's new environmental chief, attempted to ease the concerns of rattled Environmental Protection Agency employees during his first visit to agency headquarters, a batch of thousands of old emails sent between his former office and members of the oil and gas industry were released under court order.

To Pruitt's environmental critics, the 7,564 newly released pages of emails further demonstrate the cozy relationship between fossil fuel interests and Pruitt, who as Oklahoma's attorney general was tasked with enforcing the state's environmental rules and representing the state to federal regulators.

Since 2015, the Center of Media and Democracy, a nonprofit group, has sought to use Oklahoma's open records law to gain access to thousands of emails sent by Pruitt's office during his six-year tenure as the state's top prosecutor. One year earlier, a *New York Times* investigative report revealed how Pruitt used language provided to him by Devon Energy, a Oklahoma City-based oil and gas company, in letters sent to the EPA.

The emails handed over to CMD on Tuesday — the first of what could be several sets the Oklahoma attorney general office is compelled by a district court to release — show employees at Devon and other fossil fuel players setting up meetings with Pruitt's office and providing arguments for Pruitt to use when petitioning the EPA.

In testimony and interviews since Trump announced his nomination, Pruitt said that his guiding philosophy as EPA administrator will be federalism — or to allow states to manage their own environmental protections fit their individual needs.



But even this overarching philosophy may be influenced from industry sources, the newly released emails show.

In 2013, for example, Devon coordinated a meeting between Pruitt and the libertarian group The Federalist Society in order to “assist AGs in addressing federalism issues.” Pruitt’s chief of staff at the time responded that it and subsequent meetings would be “an amazing resource for the AGs and for industry.”

The correspondence also confirms the role Devon played in crafting a letter Pruitt sent to the EPA in 2013 regarding a rule limiting the emissions of methane from oil and gas fracking.

“I sent the letter today,” Clayton Eubanks, deputy solicitor general, wrote in May of that year. “Thanks for all your help on this”

“Clayton: I’m glad the Devon team could help,” Brent Rockwood, Devon’s director of public policy and government affairs, replied.

Before Pruitt was confirmed by the Senate on Friday, Democrats in the chamber argued, unsuccessfully, that the vote must be delayed until senators had the chance to review the emails.

“Our Republican friends have a fixation on emails,” Sen. Sheldon Whitehouse of Rhode Island said the day before the vote, referring to Republican-led investigations into Hillary Clinton’s emails as secretary of state, before adding: “This is the wolf into the lambfold.”

The delay was also attacked by Pruitt’s critics. “Pruitt had it in his power to release these emails,” Nick Surgey, CMD’s research director, told BuzzFeed News. “But he dragged his feet.”

#### **AP**

<http://bigstory.ap.org/article/f8872035a41c4e7ba21201d3cebdfdc4/emails-epas-pruitt-cozy-fossil-fuel-industry>

#### **Emails: EPA’s Pruitt cozy with fossil fuel industry**

By Michael Biesecker 2/22/17, 1:16PM

WASHINGTON (AP) — While serving as Oklahoma’s attorney general, new Environmental Protection Agency chief Scott Pruitt was in frequent contact with fossil fuel companies and special interest groups working to undermine federal efforts to curb planet-warming carbon emissions.

This was shown by emails released under court order late Tuesday after an Oklahoma judge ruled that Pruitt had been illegally withholding his official correspondence from the public for the last two years.

The Republican-dominated Senate voted to confirm President Donald Trump’s pick to lead EPA on Friday in a largely party-line vote. Democrats had sought to delay the vote until Pruitt’s emails were released.

The more than 7,000 emails show Pruitt and his staff coordinating strategy with conservative groups funded by oil and gas companies and executives, including billionaire brothers David and Charles Koch.

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#### **E&E News**

<http://www.eenews.net/greenwire/2017/02/22/stories/1060050420>

#### **Emails show Pruitt's ties to fossil fuel industry**

By Kevin Bogardus 2/22/17

Emails released today from U.S. EPA Administrator Scott Pruitt's time as Oklahoma attorney general show he and his office had a familiar if not symbiotic relationship with fossil fuel companies.

Under a court order, the Oklahoma attorney general's office began turning over 7,564 pages of emails and other records last night to the Center for Media and Democracy (CMD). The liberal-leaning watchdog group had sued Pruitt for failing to respond to its open records requests, including one ignored for more than two years.

The Senate confirmed Pruitt as EPA chief in a contentious 52-46 vote Friday. He addressed agency staffers for the first time as EPA chief yesterday.

Senate Democrats pushed to extend debate on his nomination until the emails were released, to no avail. CMD filed its open records lawsuit in part so senators could have reviewed the records before voting on Pruitt's nomination to lead EPA.

"There are hundreds of emails between the AG's office, Devon Energy Corp., and other polluters that senators should have been permitted to review prior to their vote to assess Pruitt's ties to the fossil fuel industry," Arn Pearson, CMD's general counsel, said in a statement.

Yesterday, a spokesman for the Oklahoma attorney general's office said it went "above and beyond" what is required under the law, providing thousands of additional documents in response to the litigation.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of Attorney General remains fully committed to the letter and spirit of the Open Records Act," said Lincoln Ferguson, the Oklahoma attorney general spokesman.

Pruitt's record as a vocal EPA critic that sued the agency over several of its regulations has long been under scrutiny, including in a December 2014 *New York Times* [story](#) that used several documents from Pruitt's office. Many of the same companies that were shown to have been in touch with Pruitt as Oklahoma attorney general will now be regulated by EPA with Pruitt as the agency's chief.

At his confirmation hearing last month, Pruitt said he was representing his constituents when his office took action against EPA at the urging of fossil fuel companies.

"The efforts that I took as attorney general were representing the interests of the state of Oklahoma," Pruitt said.

Emails released today show Pruitt and his staff at the attorney general's office were in close contact with energy interests.

In 2013, Pruitt's office worked with Devon Energy, an Oklahoma-based oil and gas producer, to rally other attorneys general against the Bureau of Land Management's proposed rules on hydraulic fracturing.

Devon executives reviewed a draft of an unsigned letter from the Oklahoma attorney general's office, which was intended for other states' lawyers to sign. The letter included similar arguments to Devon's written comments and included some passages that were identical.

"I think that this letter will make a strong statement and a real difference," wrote Brent Rockwood, Devon public policy director, in an email to Deputy Solicitor General Clayton Eubanks. "Do you think that we will get any Democrats to sign the letter? Also, when you finalize the document and send it out, can I please get a copy for my records?"

EPA was also targeted by Pruitt's office.

In September 2013, mining industry lawyer Peter Glaser reached out to the Oklahoma deputy solicitor general about the state's lawsuit against regional haze requirements. At the time, Glaser was representing Arizona in a challenge to EPA's authority to impose federal implementation plans to reduce regional haze pollution.

Two months earlier, in a blow to Pruitt, the 10th U.S. Circuit Court of Appeals ruled that EPA acted reasonably when it disapproved a state haze plan on the grounds that it did not do enough to cut sulfur dioxide emissions. That dispute started in March 2011, two months into Pruitt's tenure as Oklahoma's attorney general (*Greenwire*, Feb. 14).

Glaser suggested a brief he had filed on Arizona's behalf "could be a fruitful argument to make" in Oklahoma's effort to appeal the ruling.

Eubanks commended the brief, saying he had received a copy "from someone recently."

"Very well written, we definitely used it to try and focus our arguments on the standard of review issue in our Petition for Rehearing En Banc," Eubanks wrote.

He added, "Amicus support is welcomed and we appreciate the support, especially given the broad impact the panels incorrect decision will have nationwide."

The litigation sputtered to an end in 2014 when the U.S. Supreme Court declined to take Pruitt's appeal.

Pruitt also worked closely with the American Fuel & Petrochemical Manufacturers to oppose an EPA proposal to increase the renewable fuel standard.

The Oklahoma attorney general filed an amicus brief with the high court opposing the proposal in March 2013.

But over the summer months of 2013, his office continued to coordinate with AFPM. The group's lobbyists frequently offered legal strategy to the Oklahoma attorney general's office.

In a July 12, 2013, email, AFPM general counsel Richard Moskowitz informed Eubanks that his group and the American Petroleum Institute planned to file a waiver later that month.

"We think it would be most effective for Oklahoma to file a separate waiver petition that emphasizes 'severe environmental harm,' as this argument is more credible coming from a State with primary responsibility for achieving and maintaining attainment with the NAAQS [National Ambient Air Quality Standards]," Moskowitz said.

A couple of months later, an AFPM vice president, Sarah Magruder Lyle, reached out to Melissa Houston, Pruitt's chief of staff.

"Hey lady," she wrote, before continuing, "I have some language for you on the RFS waiver letter, but was hoping we could chat before I sent it to you so I can give you a little context."

In November 2013, EPA announced it was lowering the RFS standard for the first time in its history.

Pruitt's office put out a press release praising the decision.

"The evidence is clear that the current ethanol fuel mandate is unworkable," Pruitt said. "The decision by the EPA to lower that standard is good news for Oklahoma consumers."

### **Obama admin's 'nasty tactics'**

Pruitt's office also sought to build relationships with conservative-leaning think tanks and activist groups.

In July 2013, Aaron Cooper moved from the office of Oklahoma Gov. Mary Fallin (R) to the attorney general's office. He told colleagues that in addition to press-related duties, he would work on "public affairs outreach and strategic communications strategy."

Soon after joining, Cooper reached out to Matt Ball of Americans for Prosperity to "talk about how the AG's office and AFP can work together." And in August, he inquired with Ball about a speaking slot at AFP's national convention.

Cooper worked closely with Ball. The two traded articles to post on social media and made plans to meet for coffee. In planning for the national meeting, Cooper and Ball worked out what Pruitt would discuss in a panel discussion with Sen. James Lankford (R-Okla.).

Ball said he would look to Pruitt to focus on the "heavy hand of federal govt infringing on states rights by mandating how much Oklahomans pay for electricity."

Ball added that an official from the Competitive Enterprise Institute would talk about costs of federal regional haze regulations, so Pruitt could highlight his opposition to EPA's "sue-and-settle" practices with environmental groups.

"That way you guys don't have to deliver those messages and can focus on what the AG does best, opposing the Obama administration and its nasty tactics on the environment," Ball said.

In a follow-up email about the event in August, Ball said "this is an excellent opportunity for the AG to discuss the role of attorneys general as a last line of defense for states rights against overly intrusive federal regulation of which EPA environmental is only one example."

Cooper also worked with the Oklahoma Council of Public Affairs, which bills itself as a local version of the Heritage Foundation.

In August 2013, Cooper asked staff there for "some contacts at Heritage to whom I can send updates like this?" Attached was a press release about Pruitt's efforts to fight President Obama's national health care law.

Today's email release may be the first of many for Pruitt. Because of CMD's lawsuit, more records should be forthcoming from his time as Oklahoma attorney general.

On Feb. 27, the attorney general's office has been ordered to deliver records in response to five open records requests by CMD, according to the group. Further, CMD will ask the court to review records that have been redacted while the judge is also reviewing an unknown number of documents that could be released as well.

Click [here](#), [here](#), [here](#) and [here](#) to read the emails released to CMD.

#### **InsideEPA**

<https://insideepa.com/daily-news/automakers-formally-launch-bid-reopen-epa-vehicle-ghg-standards>

#### **Automakers Formally Launch Bid To Reopen EPA Vehicle GHG Standards**

By Doug Obey 2/22/17

Automakers are formally urging EPA Administrator Scott Pruitt to withdraw the agency's decision to retain its light-duty vehicle greenhouse gas (GHG) standards for model years (MY) 2022-2025, arguing that the agency has ample authority to scrap the determination and "resume" a joint mid-term review of the standards with the Department of Transportation (DOT).

The request is not unexpected, given prior harsh critiques from automakers of EPA's Jan. 13 decision to retain the vehicle standards in the closing days of the Obama administration.

But the recent request offers another sign that continuing uncertainty will persist around EPA's vehicle GHG program -- with Pruitt already indicating prior to his Senate confirmation that he planned to review the Obama EPA determination. That raises the prospect of a clash between the agency and California regulators, who have vowed to push forward with aggressive vehicle GHG programs.

"The Final Determination is the product of egregious procedural and substantive defects and EPA should withdraw it," the Alliance of Automobile Manufacturers writes in [a Feb. 21 letter to Pruitt](#) that summarizes an array of auto industry objections to the Obama EPA decision to keep the standards in place.

The letter focuses largely on industry's request to resume the mid-term review of the MY 2022-2025 GHG standards, and it does not have a specific request regarding the rule's stringency. However, it also floats a range of arguments that could eventually serve to weaken the standards.

The group Global Automakers also sent Pruitt a similar letter seeking to reopen the decision.

The pleas are the industry's latest response to the Obama EPA's determination, which came pursuant to a promised mid-term review of those standards. Industry critics say the move significantly accelerated the mid-term review process, which was expected to conclude in mid 2018.

#### **Vehicle Standards**

[Multiple observers have interpreted](#) the last-minute decision, first proposed just after the November election, as an attempt to make it more difficult for the Trump EPA to weaken the standards. EPA stated in its final decision that its technical analysis does not support making the current GHG standards less stringent and could have supported a decision to tighten them.

The alliance letter also highlights procedural arguments that it should be a relatively simple matter for EPA to reverse course. And it comes as some EPA critics are separately sharpening their attack on the agency's 2009 waiver authorizing California's vehicle GHG program -- a program that now significantly complicates any EPA effort to weaken its light-duty vehicle GHG standard.

The alliance argues that the final determination is a rule -- not an adjudication as EPA claims -- making the decision subject to a regulatory freeze now in place for last-minute Obama administration rules.

"[A] wealth of precedents confirmed that the Final Determination is a rule, and all rules not yet published in the *Federal Register* are subject to the regulatory freeze," the alliance says.

The alliance then offers alternative rationales for a quick EPA reversal "on its own initiative," whether or not EPA under Pruitt continues to argue that its determination is not a formal rule.

"If it is a rule, it is clearly a nonfinal one, because it has not been published in the *Federal Register*," the alliance says, citing a 1996 case -- *Kennecott Utah Copper Corp. v. U.S. Department of Interior* -- in the U.S. Court Of Appeals for the District of Columbia Circuit as a basis to withdraw the final determination without a formal notice-and-comment rulemaking.

"Even if EPA continues to endorse the view that the Final Determination is an adjudication, however, EPA has brought inherent power to reconsider its decision 'within the period for taking an appeal,'" the alliance claims, citing other court precedents, including a 1984 D.C. Circuit decision in *American Methyl Corp. v. EPA*.

#### **'Abrogated' Commitment**

The rest of the letter outlines an array of alleged procedural and substantive flaws in EPA's determination that should justify a prompt withdrawal of the decision, largely summarizing persistent industry criticism of the decision.

"EPA has abrogated its commitment to a robust midterm evaluation," the alliance says, reprising claims that the move scrapped prior EPA and DOT commitments to propose a decision on the determination prior to mid 2017 of the earliest.

"The industry took the agencies at their word, commissioning complex studies critical to assessing the MY2022-2025 standards and the process used by EPA in its analysis, that we had expected to add to the administrative record for the Midterm Evaluation in 2017," the alliance says.

The industry group also faults the agency for rejecting its request to extend the comment period on its proposed determination, and contends that EPA's "unilateral announcement of its Final Determination" amounts to "failure to harmonize its greenhouse gas emissions standards" with DOT's fuel economy standards. Due to earlier statutory restrictions, DOT has not yet issued fuel economy limits for MY 2022-2025.

The alliance also reopens an array of technical and cost arguments against EPA's decision to retain the standards, including claims the vehicle standards will require more use of electrification than EPA has assumed; that there are

"substantial discrepancies" between EPA and DOT's technology and cost assumptions related to the MY 2022-2025 standards; and that EPA improperly failed to conduct analysis of consumer acceptance of compliance technologies.

The letter is one of the first formal requests to Pruitt to reconsider Obama-era GHG policies, but it is also significant harbinger of future analysis the auto industry is poised to release regarding the vehicle GHG standards.

"[A]nalysis commissioned according to EPA's original timetable is ongoing and the Alliance expects that new information relevant to the Final Determination's underlying assumptions and resulting analysis will soon emerge. EPA's rushed timetable, coupled with its about-face on the timing of the Midterm Evaluation prevented consideration of this information," the letter says. -- *Doug Obey* ([dobey@iwpnews.com](mailto:dobey@iwpnews.com))

#### **Fox News**

<http://www.foxnews.com/politics/2017/02/22/emails-reveal-epa-chief-pruitts-work-with-oil-gas-companies.html>

#### **Emails reveal EPA chief Pruitt's work with oil, gas companies**

By Barnini Chakraborty 2/22/17

EPA Administrator Scott Pruitt worked closely with major oil and gas producers, electric utilities and political groups to roll back numerous environmental regulations during his time as Oklahoma's attorney general, new records reveal.

An Oklahoma judge ordered the release of thousands of emails between Pruitt and fossil fuel companies like Koch Industries and Devon Energy last week -- after he and the state AG's office were accused of ignoring multiple records requests.

The group that sought the emails, the Center for Media and Democracy, pointed to the messages to accuse Pruitt of being too close to the industries he'll now regulate.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry," Nick Surgey, research director at CMD, said in a statement Wednesday.

The emails were released days after Pruitt was narrowly confirmed by the Senate to lead the EPA. Pruitt was an outspoken critic of the agency's policies during the Obama administration, and the emails shed light on how he fought against its regulations.

One email showed that American Fuel & Petrochemical Manufacturers coordinated opposition in 2013 to both the Renewable Fuel Standard Program and ozone limits with Pruitt's office.

CMD said the group provided Pruitt with "template language" for an Oklahoma petition, under the assumption that the argument "is more credible coming from a State."

Pruitt filed opposition to both the RFS and ozone limits in 2013.

Other emails highlight the apparently close relationship Pruitt had with Devon Energy. The company helped Pruitt draft language in a letter he sent to the EPA about the limiting of methane from oil and gas fracking, according to CMD.

Devon also helped organize a meeting between Pruitt, coal industry lawyer Paul Seby and Leonard Leo of the Federalist Society to create a "clearinghouse" that would "assist AGs in addressing federalism issues."

In another email dated August 2013, Matt Ball, an executive at Americans for Prosperity, sent Pruitt an email thanking him and his "respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states."

Pruitt was confirmed to head up the EPA after a lengthy floor debate in the Senate. Democrats blasted him for vowing to roll back Obama-era environmental regulations and took issue with past comments he made where he challenged the science behind climate change.

Republicans, fed up with overregulation, argued Pruitt was the right candidate to scale back the size and reach of the EPA.

Pruitt delivered his first remarks to EPA employees on Tuesday, urging them to "avoid" regulatory "abuses" and balance economic and environmental needs.

"We as an agency and we as a nation can be both pro-energy and jobs and we can be pro-environment, and we don't have to choose between the two," Pruitt said.

It was on the eve of his confirmation that Pruitt was ordered by the judge to turn over more than 2,000 documents. Democrats used the development to push for a delay in the vote, but did not succeed.

Senate Majority Leader Mitch McConnell slammed efforts to postpone the vote as another delay tactic by Democrats that was "unprecedented, harmful and pointless."

Arn Pearson, general counsel for CMD accused the AG's office of trying to "evade public scrutiny" by releasing the emails Tuesday night.

Calls to the EPA and Devon Energy for comment were not immediately returned.

#### **MSNBC**

<http://www.msnbc.com/rachel-maddow-show/new-emails-shed-light-epa-chiefs-industry-ties>

#### **New emails shed light on EPA chief's industry ties**

By Steve Benen 2/22/17, 12:49PM

Donald Trump chose so many top administration officials who were hostile to their agencies' core mission that the nominations almost seemed sarcastic. The president chose Betsy DeVos to lead the Department of Education despite her opposition to public schools; he chose Andy Puzder to lead the Department of Labor despite his opposition to workers; and Trump chose Scott Pruitt to lead the EPA despite his overt hostility towards environmental safeguards.

Pruitt, who clashed with the EPA during his tenure as attorney general of Oklahoma, spoke to the agency's employees yesterday, and by some measures, the new administrator's remarks were not well received.

Rachel Maddow reports on the confirmation of Scott Pruitt to head the EPA despite the best efforts of environmentalists, but notes that in just a few days, thousands of pages of Pruitt e-mails will be release on a judge's order that could complicate...

But while Pruitt settles into his new office, we're not yet done scrutinizing the work he did before he reached the EPA.

The *New York Times* reported this morning:



*During his tenure as attorney general of Oklahoma, Scott Pruitt, now the Environmental Protection Agency administrator, closely coordinated with major oil and gas producers, electric utilities and political groups with ties to the libertarian billionaire brothers Charles G. and David H. Koch to roll back environmental regulations, according to over 6,000 pages of emails made public on Wednesday.*

*The publication of the correspondence comes just days after Mr. Pruitt was sworn in to run the E.P.A., which is charged with reining in pollution and regulating public health.*

If you missed [Rachel's coverage](#) of this last week, it's a doozy of a story. Pruitt, in effect, was illegally hiding official emails that documented his cooperation with the oil and gas industries – the industries he'll ostensibly help oversee as the head of the EPA. The Center for Media and Democracy filed suit to obtain the emails Pruitt wanted to hide, and last week, a judge ordered their release.

This, of course, unfolded *before* the Senate confirmation vote, which led Democrats to make an obvious request: members should wait a few days to review the documents before deciding whether to give Pruitt the job. Republican leaders refused – saying it made more sense to vote on the nomination with less information about Pruitt's professional background, instead of more.

Asked why he couldn't wait for senators to have a more complete picture, Senate Majority Leader Mitch McConnell (R-Ky.), doing his best imitation of Bartleby the Scrivener, said, "Because I choose not to."

But Senate Republicans rushing Pruitt through the confirmation process and into the EPA didn't make the underlying controversy go away. The vote simply punted the controversy into this week, putting the mess on Pruitt's desk during his first week on the job.

And while it'll take a while to review this first batch of documents, the early takeaway was predictable: as Oklahoma's A.G., Pruitt had a hand-in-glove alliance with the industries he's now supposed to regulate, while combating the environmental agency he's now expected to lead.

*"Thank you to your respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states," said one email sent to Mr. Pruitt and an Oklahoma congressman in August 2013 by Matt Ball, an executive at Americans for Prosperity. That nonprofit group is funded in part by the Kochs, the Kansas business executives who spent much of the last decade combating federal regulations, particularly in the energy sector. "You both work for true champions of freedom and liberty!" the note said.*

*As attorney general of Oklahoma, Mr. Pruitt took part in 14 lawsuits against major E.P.A. environmental rules, often in coordination with energy companies such as Devon Energy, an Oklahoma oil and gas producer, and American Electric Power, an Ohio-based electric utility. The emails show that his office corresponded with those companies in efforts to weaken federal environmental regulations – the same rules he will now oversee.*

A total of 52 senators voted to put Pruitt in charge of the EPA anyway. Given a choice to delay the vote a week until after members could review these emails, Senate Republicans refused.

A Center for Media and Democracy spokesperson said in a written statement, “The newly released emails reveal a close and friendly relationship between Scott Pruitt’s office and the fossil fuel industry, with frequent meetings, calls, dinners, and other events.”

Note, this isn’t the end of the story: the next round of emails is scheduled to be released on Monday.

#### **The Guardian**

[https://www.theguardian.com/environment/2017/feb/22/scott-pruitt-emails-oklahoma-fossil-fuels-koch-brothers?CMP=share\\_btn\\_tw](https://www.theguardian.com/environment/2017/feb/22/scott-pruitt-emails-oklahoma-fossil-fuels-koch-brothers?CMP=share_btn_tw)

#### **New EPA head Scott Pruitt's emails reveal close ties with fossil fuel interests**

By Oliver Milman and Dominic Rushe 2/22/17

The close relationship between Scott Pruitt, the new administrator of the Environmental Protection Agency, and fossil fuel interests including the billionaire Koch brothers has been highlighted in more than 7,500 emails and other records released by the Oklahoma attorney general’s office on Wednesday.

The documents show that Pruitt, while Oklahoma attorney general, acted in close concert with oil and gas companies to challenge environmental regulations, even putting his letterhead to a complaint filed by one firm, Devon Energy. This practice was first revealed in 2014, but it now appears that it occurred more than once.

The emails also show that American Fuel and Petrochemical Manufacturers, an oil and gas lobby group, provided Pruitt’s office with template language to oppose ozone limits and the renewable fuel standard program in 2013. AFPM encouraged Oklahoma to challenge the rules, noting: “This argument is more credible coming from a state.” Later that year, Pruitt did file opposition to both of these regulations.

The letters also show the cosy relationship between Pruitt and the American Legislative Exchange Council (Alec), the influential US lobbying network of Republican politicians and big businesses, and other lobby groups sponsored by the Koch brothers, the billionaire energy investors who have spent decades fighting against environmental regulation.

Alec has consistently challenged the science on climate change and fought against tougher environmental regulation. Companies including Google, Ford and Enterprise Rent-a-Car have quit Alec in protest of its climate change activities.

The emails contain correspondence between Pruitt’s executive assistant and Amy Anderson, Alec director and Oklahoma membership contact, about Pruitt’s appearance at a May 2013 Alec board meeting in Oklahoma City.

That meeting attracted more protesters than attendees, with 600 firefighters, teachers, environmentalists and church leaders carrying signs reading “ALEC is Not OK” and chanting: “Backroom deals are Alec’s game / Sweetheart deals for corporate gain.”

Pruitt addressed a workshop entitled “Embracing American Energy Opportunities: From Wellheads to Pipelines”.

The emails state that Pruitt spoke “on state primacy in oil and gas regulation and the EPA’s sue & settle modus operandi”. The lunch meeting was sponsored by Koch Industries, a major Alec sponsor.

Pruitt was congratulated for his work on pushing back against the EPA by another Koch-backed pressure group.

“Thank you to your respective bosses and all they are doing to push back against President Obama’s EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states,” said one email sent to Pruitt and an Oklahoma congressman in August 2013 by Matt Ball, an executive at Americans for Prosperity, a nonprofit group also funded in part by the Kochs. “You both work for true champions of freedom and liberty!” the note said.

Last week, an Oklahoma judge ordered that emails from a January 2015 open records request be released by Tuesday. A further batch of emails is due to be turned over next week. The Center for Media and Democracy, which has made nine separate open records requests for Pruitt’s emails, said it will attempt to obtain all of the sought-after communications without exceptions.

Pruitt was confirmed as EPA administrator on Friday. Democrats had sought to delay the Senate vote until the emails were released but were unsuccessful.

“The emails show a very cosy relationship between Pruitt’s office and particularly Devon Energy, as well as other coal, oil and gas companies,” said Nick Surgey, research director at the Center for Media and Democracy.

“Pruitt is the world’s top environmental regulator now and these emails raise serious conflict of interest concerns. He has very close ties to fossil fuel firms and has shown himself to be generally opposed to the rules the EPA has to protect the environment.”

#### **Washington Times**

[http://www.washingtontimes.com/news/2017/feb/22/emails-close-relationship-pruitt-energy-industry/?utm\\_source=RSS\\_Feed&utm\\_medium=RSS](http://www.washingtontimes.com/news/2017/feb/22/emails-close-relationship-pruitt-energy-industry/?utm_source=RSS_Feed&utm_medium=RSS)

#### **Emails show ‘close and friendly’ relationship between Pruitt, energy industry: Watchdog group**

By Ben Wolfgang 2/22/17

Newly installed EPA administrator Scott Pruitt cultivated a “close and friendly” relationship with oil-and-gas companies during his tenure as Oklahoma attorney general, a watchdog group charged Wednesday, pointing to documents showing Mr. Pruitt’s office worked hand-in-hand with fossil-fuel companies in the fight against Obama-era energy regulations.

More than 7,000 pages of emails from the Oklahoma attorney general’s office were made public Wednesday morning following a judge’s order last week. Democrats and other critics of Mr. Pruitt argue the messages prove that the EPA chief frequently colluded with oil-and-gas firms while Oklahoma’s attorney general, raising questions about whether he’s fit for his new role.

While the messages do not appear to contain any smoking guns that could imperil Mr. Pruitt’s future, they do contain frequent communication between the Oklahoma attorney general’s office and energy companies, energy industry lobbying groups, and powerful conservative organizations such as Americans for Prosperity.

In one 2013 back-and-forth, Mr. Pruitt's office seems to work closely with the American Fuel & Petrochemical Manufacturers (AFPM) in an attempt to sink the federal Renewable Fuel Standard, a set of regulations requiring ethanol and other biofuels to be blended with the nation's gasoline supply.

The AFPM provided Mr. Pruitt's office with draft language it could use to challenge the standard in court.

"This argument is more credible coming from a state," an AFPM official said in an email.

Other messages show close coordination between Mr. Pruitt's office and Devon Energy, an Oklahoma-based energy company. The two sides spoke frequently as they worked on a strategy to oppose federal regulations on fracking.

Mr. Pruitt later sent a letter to the EPA opposing the rules, using language largely written by Devon Energy. The emails show that draft letters were sent back and forth between Devon Energy and the attorney general's office, with Devon Energy leaders making changes and suggestions.

The watchdog group Center for Media and Democracy, who sued to get the emails, said the disclosures prove once again the close ties between Mr. Pruitt and the fossil-fuels industry. Senate Democrats tried to delay Mr. Pruitt's confirmation vote last week until after the emails were released, but their efforts failed.

"There is no valid legal justification for the emails we received last night not being released prior to Pruitt's confirmation vote other than to evade public scrutiny," said Arn Pearson, general counsel for the Center for Media and Democracy. "There are hundreds of emails between the AG's office, Devon Energy, and other polluters that senators should have been permitted to review prior to their vote to assess Pruitt's ties to the fossil fuel industry."

In testimony before the Senate last month, Mr. Pruitt defended his close working relationship with Devon Energy and other oil-and-gas companies, saying it was his duty to fight on behalf of Oklahoma industries against burdensome federal regulations.

"That was an effort that was protecting the state's interest," he said last month. "It was particular to an industry ... There was concern expressed by that industry."

In its own statement Tuesday night, the Oklahoma attorney general's office said it was complying with the judge's order even though the push for the emails was driven by partisan politics.

"The office went above and beyond what is required under the Open Records Act and produced thousands of additional documents that, but for the court's order, would typically be considered records outside the scope of the act," Lincoln Ferguson, press secretary for the attorney general's office, said in a statement. "This broad disclosure should provide affirmation that, despite politically motivated allegations, the office of attorney general remains fully committed to the letter and spirit of the Open Records Act."

The EPA did not offer comment Wednesday in response to the email release.

Thousands of additional email records are being reviewed by a federal judge and could be released soon.

### **The Verge**

<http://www.theverge.com/2017/2/22/14697816/epa-administrator-scott-pruitt-emails-fossil-fuel-industry>

### **New EPA head is awfully friendly with the industry he should regulate, emails show**

By Alessandra Potenza 2/22/17, 11:58AM

The new administrator of the Environmental Protection Agency, Scott Pruitt, closely worked with major oil and gas companies, electric utilities, and political groups to undo environmental regulations, according to [more than 7,000 pages of emails made public today](#). Pruitt now leads the government agency responsible for protecting the environment and regulating pollution.

Pruitt was ordered to release the emails by an Oklahoma judge, in response to a lawsuit by the Center for Media and Democracy. Democrats had urged the Senate Republican majority leader Mitch McConnell of Kentucky to delay Pruitt's confirmation hearing until after the emails were released, but with no success. Pruitt was confirmed as head of the EPA just five days ago.

"The newly released emails reveal a close and friendly relationship between Scott Pruitt's office and the fossil fuel industry, with frequent meetings, calls, dinners, and other events," Nick Surgey, research director at the Center for Media and Democracy, said in a statement. "And our work doesn't stop here – we will keep fighting until all of the public records involving Pruitt's dealings with energy corporations are released." More emails from the Oklahoma Attorney General office are expected to be released on February 27th.

Pruitt has been one of the most contentious of President Donald Trump's nominees. As Oklahoma's attorney general, he made a name for himself for bringing more than a dozen lawsuits against the EPA, meant to roll back major environmental rules. In these lawsuits, he often worked in coordination with several fossil fuel and electric utility companies, such as Devon Energy and American Electric Power. As EPA administrator, he will now be responsible for enforcing those environmental regulations he tried to undo and regulate the companies he worked with.

"Thank you to your respective bosses and all they are doing to push back against President Obama's EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states," said one 2013 email sent to Pruitt by Matt Ball, an executive at the nonprofit group Americans for Prosperity, according to The New York Times. That nonprofit has ties with Charles and David Koch, the billionaire brothers who've worked to undo federal regulations in the energy sector for years.

Yesterday, during his first speech to the EPA, Pruitt told around 100 EPA employees that the agency will be "pro-energy and jobs and pro-environment." He also said he wants to give much authority for environmental protection back to the states. In his first interview as the head of the EPA with The Wall Street Journal, Pruitt said he expects to roll back the Clean Power Plan, Obama's landmark environmental policy to reduce greenhouse gas emissions and meet the goals set under the Paris Agreement.

Pruitt has already received strong opposition from several EPA employees now under his control. One current EPA staffer, who requested anonymity, told Mother Jones about the fear felt at the agency. The EPA official also vowed resistance. "Despite the long odds we face, we will never stop working to protect every person's right to have a healthy place to live, work, and play," the employee told *Mother Jones*. "And if the new administrator casts me out of the job I love, I will not stop working toward the principles that have always animated my life. This is who I am, and that will never change. I stand in solidarity with brothers and sisters that work to protect human rights, human health, and the environment here in the US and all over the world. The struggle continues."

Today's emails likely won't cause Pruitt many problems, however, according to the *New York Times*. In fact, the emails confirm what was already revealed by emails and documents disclosed to the *Times* in 2014. At that time, the newspaper published a story about Pruitt's connection with energy companies, in its fight against Obama's regulation.

### **Bloomberg**

[https://www.bloomberg.com/news/articles/2017-02-22/e-mails-reveal-epa-chief-s-coordination-with-energy-industry?cmpid=socialflow-twitter-business&utm\\_content=business&utm\\_campaign=socialflow-organic&utm\\_source=twitter&utm\\_medium=social](https://www.bloomberg.com/news/articles/2017-02-22/e-mails-reveal-epa-chief-s-coordination-with-energy-industry?cmpid=socialflow-twitter-business&utm_content=business&utm_campaign=socialflow-organic&utm_source=twitter&utm_medium=social)

### **E-Mails Reveal EPA Chief's Coordination With Energy Industry**

By Jeniffer A Dlouhy 2/22/17

Newly installed EPA Administrator Scott Pruitt closely coordinated with major oil and gas companies, refiners and groups linked to the billionaire Koch brothers to combat environmental regulations during his time as Oklahoma attorney general, according to thousands of pages of e-mails released Wednesday.

The documents, released under court order to the Center for Media and Democracy, a nonprofit watchdog, follow a pitched battle over whether Pruitt should lead the Environmental Protection Agency, culminating in a narrow 52-46 vote Friday to confirm him.

The documents show Pruitt collaborated with the top U.S. refining trade group to mount an attack on annual biofuel quotas in 2013. According to an analysis by the center, the American Fuel and Petrochemical Manufacturers group provided Pruitt with drafted sample language for an Oklahoma petition.

An Oklahoma judge ordered the release of the e-mails on Feb. 16 to the Center for Media and Democracy, which had been seeking the documents since January 2015. Pruitt was narrowly confirmed by the Senate on Friday and sworn in to lead the EPA, the same agency he repeatedly sued while Oklahoma attorney general.

In a July 13, 2013 e-mail, AFPM asks Pruitt to file a petition with the EPA challenging biofuel quotas. "We think it would be most effective for Oklahoma to file a separate waiver petition that emphasizes 'severe environmental harm,' as this argument is more credible coming from a state," an AFPM representative told Pruitt.

A total of 7,564 pages were released by the Center on Wednesday.

"Despite repeated attempts by Pruitt and the Oklahoma AG's office to stonewall CMD and the public, we've won a major breakthrough in obtaining access to public records that shine a light on Pruitt's emails with polluters and their proxies," said Nick Surgey, research director for the Center.

The Oklahoma Attorney General's office said it has gone beyond the requirements of the Open Records Act.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of the Attorney General remains fully committed to the letter and spirit of the Open Records Act," the office said in a statement.

Some of the e-mails illustrate Pruitt's administration's contact with the Oklahoma Council of Public Affairs, a self-described think tank conducting research and analysis of public issues in the state "from a perspective of limited government, individual liberty and a free-market economy."

In 2013, Pruitt's staff solicited then-OCPA President Michael Carnuccio's participation in a "short social media video to highlight his leadership in the Affordable Care Act lawsuit." Carnuccio agreed to make himself available, according to a Dec. 3, 2013 message from one of his staffers.

#### **Bloomberg BNA**

<https://www.bna.com/pruitt-prioritizes-sluggish-n57982084174/>

#### **Pruitt Prioritizes Sluggish Superfund Program**

2/22/17

Scott Pruitt has said that, if confirmed by the Senate as administrator of the Environmental Protection Agency, he would take on a superfund program struggling to clean up toxic sites efficiently without enough state or federal funding.

The former head of the EPA office that oversees superfund, Mathy Stanislaus, said superfund appropriations have declined over the past four or five budget cycles, creating a backlog of sites awaiting funding.

The cleanup process has slowed as funding declines.

When all cleanup remedies have been installed on a superfund site, the EPA deems it "construction complete." According to a 2007 investigation by the Center for Public Integrity, the average yearly number of "construction complete" sites at that time was 42.

In fiscal year 2016, there were 11 “construction complete” sites, the agency said.

#### Pruitt’s Priorities

In response to senators’ questions about environmental cleanup, Pruitt said multiple times that he would make superfund “a priority” if he becomes EPA administrator.

“If confirmed, I would expect to prioritize the cleanup of contaminated land,” he said in written responses to questions from Sen. Cory Booker (D-N.J.), Sen. Kirsten Gillibrand (D-N.Y.) and Sen. Jeff Merkley (D-Ore.).

Booker met with Pruitt before the Oklahoma attorney general’s Jan. 18 U.S. Senate Environment and Public Works Committee hearing.

“Mr. Pruitt said he would advocate for funding for superfund cleanups in the administration’s large infrastructure package. If Mr. Pruitt is confirmed, Sen. Booker will hold him accountable to this commitment,” a spokesperson for Booker’s office said in an e-mail.

Booker was concerned about the Passaic River Superfund Site in his home city, Newark, N.J. The EPA announced a plan in 2016 to remove 3.5 million cubic yards of sediment from the river, according to Booker.

The senator asked Pruitt to commit to carrying out the EPA’s plan for that site efficiently. Pruitt responded that he wasn’t familiar with the site but would seek input from those interested before taking action.

#### Stronger State Roles

Pruitt indicated at the Senate committee hearing that he would be more deferential to state governments if he becomes head of the EPA. That might be bad news for states facing cleanup challenges at superfund sites, Stanislaus said.

“Superfund takes on the most egregious sites that states need federal assistance on, and the fact is that there’s been a decline in state budgets to handle these kind of sites, so you just can’t delegate that wholly to states,” Stanislaus said.

Neither the states nor the EPA have enough money to assess and clean up sites, so every site is dealt with “sub-optimally,” Stanislaus said.

“The ultimate achievement of a cleaned-up site, and the potential economic benefits of a cleaned-up site, are delayed,” he said.

While he headed the EPA’s Office of Land and Emergency Management from 2009-2017, Stanislaus said states increasingly looked to the EPA for financial help and expertise with National Priorities List sites and immediate risk sites.

“The federal government is a backstop,” he said.

Peter deFur, president of the consulting firm Environmental Stewardship Concepts, said states just aren’t equipped to take on more superfund responsibilities because many don’t have their own superfund laws.

“There are no implementing regulations, no expertise, no people who know the program. The state would have to develop all that and then apply to EPA for delegated status, as in air, water and waste permit programs,” he said. “States don’t have the system to implement superfund because they don’t want it.”

#### Running Dry

DeFur said he has been watching the declining pace of cleanup as funding decreases.

In the late 1990s, funding ran out from a tax on the petroleum and chemical industries. "Orphan" superfund sites, or those where a responsible party hadn't been identified to pay for cleanup, were deeply affected.

"The orphan sites' pace of cleanup just plummeted," deFur said.

Work slows down at sites where cleanups are being conducted by responsible parties because EPA funds and staff time are limited, he said. Less thorough removal options, such as capping buried contamination instead of unearthing it, may be chosen because they are cheaper.

Since the superfund program's operating resources are drawn from congressional appropriations, the operation of the program also changed, he said.

If Pruitt cuts back on EPA staff, leaving an increased workload for remaining employees, deFur said that will be bad news for the program. Myron Ebell, who led Trump's EPA transition team before returning to his job at the Competitive Enterprise Institute, said this week the overall number of EPA employees should be reduced from the current 15,000 to 5,000, though Ebell made clear he wasn't speaking on behalf of the Trump administration.

"It's gonna be a mess," deFur said.

According to a Government Accountability Office [report](#), federal appropriations for superfund have declined from about \$2 billion in 1999.

In fiscal year 2016, Congress provided superfund nearly \$1.1 billion. The agency is under a continuing resolution in fiscal year 2017.

The EPA said the balance of the hazardous substance superfund trust fund was \$188 million as of the end of 2016.

#### **Wall Street Journal**

<https://www.wsj.com/articles/auto-makers-ask-epas-pruitt-to-reverse-fuel-economy-emissions-decision-1487738674>

#### **Auto Makers Ask EPAs Pruitt to Reverse Fuel-Economy, Emissions Decision**

By Mike Spector 2/22/17, 10:51AM

Auto makers asked the Environmental Protection Agency to undo the Obama administration's decision to lock in future stringent fuel-economy and emissions standards, as the companies seek to take advantage of President Donald Trump's pledge to roll back regulations.

In separate letters sent Tuesday to new EPA Administrator Scott Pruitt, two Washington lobbying groups representing car companies urged the agency to withdraw its "final determination" that future emissions standards remain intact.

The letters, coming on the heels of Mr. Pruitt's Senate confirmation Friday and on his first day greeting EPA staff, signaled the auto industry's resolve to get future mileage and emissions standards relaxed. Ford Motor Co. Chief Executive Mark Fields used a recent White House breakfast with other industry leaders to directly lobby Mr. Trump for relief.

An EPA spokeswoman said the agency was reviewing industry correspondence and declined further comment. Mr. Pruitt, without detailing potential changes, on Tuesday told EPA staff that regulations "ought to make things regular" and companies "we regulate ought to know what they can expect from us." In November, a Trump adviser said the incoming administration would conduct a comprehensive review of regulations, including car emissions and fuel economy rules.

A week before Mr. Trump took office in January, the EPA decided to keep targets that called for auto makers to sell vehicles averaging 54.5 miles a gallon, or roughly 40 mpg in real-world driving, by 2025. The decision capped a review that wasn't expected to be completed until April 2018.



Auto makers contend the targets would be difficult to meet because lower gasoline prices are sending consumers flocking to less-efficient and higher-emitting pickup trucks and sport utilities. When the targets were codified in 2012, prices at the gas pump had soared to record highs.

The electric plug-in cars and hybrids that auto makers contend are needed to meet the standards currently represent a sliver of U.S. sales.

The EPA's decision should be subject to a recent Trump administration regulatory freeze, and the agency should then resume reviewing the standards, according to a letter to Mr. Pruitt from Mitch Bainwol, head of the Alliance of Automobile Manufacturers, a group representing a dozen car companies including Ford, General Motors Co. and Toyota Motor Corp.

For auto makers, the final determination made before Mr. Trump's inauguration "may be the single most important decision the EPA has made in recent history," Mr. Bainwol wrote in the letter, reviewed by The Wall Street Journal. He went on to allege the previous review was "infected" by various shortcomings, including failing to await industry studies and giving companies and the public only 24 days in December to comment on the agency's proposed determination.

In addition, Mr. Bainwol raised concerns that environmental regulators didn't coordinate the decision with the National Highway Traffic Safety Administration, another agency that sets fuel-economy rules. Complying with the current standards would cost the automotive industry \$200 billion even under optimistic EPA estimates, Mr. Bainwol said, and potentially threaten more than a million jobs.

"An action of this magnitude requires a thoughtful and collaborative decision-making process" but the EPA in January "opted for political expediency instead, and jammed through" the final determination, wrote John Bozzella, head of the Association of Global Automakers, another Washington lobbying group representing foreign car makers with U.S. operations.

A decision by the EPA to reopen the midterm review of the emissions standards would likely face challenges from environmental groups long critical of auto makers' efforts to market cleaner cars and trucks.

The midterm review called for the EPA to decide whether to relax, toughen or leave unchanged future emissions targets. Auto makers agreed to the lofty targets in 2011 knowing a viability assessment loomed well before the toughest standards would be enforced.

The EPA released a draft technical report last year predicting car companies would only achieve 50.8 mpg, or about 36 mpg in real-world driving, in 2025 amid current market conditions. But the agency said auto makers have a range of technologies at their disposal to reach more ambitious targets at affordable costs, such as gasoline direct-injection and stop-and-go features.

"EPA has already engaged in an extensive, thorough and lengthy process to evaluate the best technical evidence and found no basis to weaken the standards," said Roland Hwang, director of the energy and transportation program at the Natural Resources Defense Council, adding that relaxing standards could hurt Americans depending on clean-car technology jobs. "Revisiting the final determination opens up what should be a science-based decision to political meddling."

#### **New York Times**

<https://www.nytimes.com/2017/02/22/us/politics/scott-pruitt-environmental-protection-agency.html>

#### **The Pruitt Emails: E.P.A. Chief Was Arm in Arm With Industry**

By Coral Davenport and Eric Lipton 2/22/17, 10:18AM

WASHINGTON — During his tenure as attorney general of Oklahoma, Scott Pruitt, now the Environmental Protection Agency administrator, closely coordinated with major oil and gas producers, electric utilities and political groups with

ties to the libertarian billionaire brothers Charles and David Koch to roll back environmental regulations, according to over 6,000 pages of emails made public on Wednesday.

The publication of the correspondence comes just days after Mr. Pruitt was sworn in to run the E.P.A., which is charged with reigning in pollution and regulating public health.

“Thank you to your respective bosses and all they are doing to push back against President Obama’s EPA and its axis with liberal environmental groups to increase energy costs for Oklahomans and American families across the states,” said one email sent to Mr. Pruitt and an Oklahoma congressman in August 2013 by Matt Ball, an executive at Americans for Prosperity. That nonprofit group is funded in part by Charles and David Koch, the Kansas business executives who spent much of the last decade combating federal regulations, particularly in the energy sector. “You both work for true champions of freedom and liberty!” the note said.

Mr. Pruitt has been among the most contentious of President Trump’s cabinet nominees. Environmental groups, Democrats in Congress and even current E.P.A. employees have protested his ties to energy companies, his efforts to block and weaken major environmental rules, and his skepticism of the central mission of the federal agency he now leads.

An Oklahoma judge ordered the release of the emails in response to a lawsuit by the Center for Media and Democracy, a liberal watchdog group. Many of the emails are copies of [documents previously provided in 2014 to The New York Times](#), which examined Mr. Pruitt’s interaction with energy industry players that his office also helps regulate.

The companies provided him draft letters to send to federal regulators in an attempt to block federal regulations intended to regulate greenhouse gas emissions from oil and gas wells, ozone air pollution, and chemicals used in fracking, the email correspondence shows.

They held secret meetings to discuss more comprehensive ways to combat the Obama administration’s environmental agenda, and the companies and organizations they funded repeatedly praised Mr. Pruitt and his staff for the assistance he provided in their campaign.

The correspondence points to the tension emerging as Mr. Pruitt is now charged with regulating many of the same companies with which he coordinated closely in his previous position. As attorney general of Oklahoma, Mr. Pruitt took part in 14 lawsuits against major E.P.A. environmental rules, often in coordination with energy companies such as Devon Energy, an Oklahoma oil and gas producer, and American Electric Power, an Ohio-based electric utility.

The emails show that his office corresponded with those companies in efforts to weaken federal environmental regulations — the same rules he will now oversee.

“Please find attached a short white paper with some talking points that you might find useful to cut and paste when encouraging States to file comments on the SSM rule,” wrote Roderick Hastie, a lawyer at Hunton & Williams, a law firm that represents major utilities, including Southern Company, urging Mr. Pruitt’s office to file comments on a proposed E.P.A. rule related to so-called [Startup, Shutdown, & Malfunction Emissions](#).

The most frequent correspondence was with Devon Energy, which has aggressively challenged rules proposed by the E.P.A. and the Department of Interior’s Bureau of Land Management, which controls drilling on federal lands — widespread in the west. In the 2014 election cycle, Devon was one of the top contributors to the Republican Attorneys General Association, which Mr. Pruitt [led for two years during that period](#).

In a March 2013 letter to Mr. Pruitt’s office, William Whitsitt, then an executive vice president of Devon, referred to a letter his company had drafted for Mr. Pruitt to deliver, on Oklahoma state stationery, to Obama administration officials. Mr. Pruitt, meeting with White House officials, made the case that the rule, which would rein in planet-warming methane emissions, would be harmful to his state’s economy. His argument was taken directly from Mr. Whitsitt’s draft language.

“To follow up on my conversations with Attorney General Pruitt and you, I believe that a meeting — or perhaps more efficient, a conference call — with OIRA (the OMB Office of Information and Regulatory Analysis) on the BLM rule should be requested right away,” Mr. Whitsitt wrote. “The attached draft letter (or something like it that Scott is comfortable talking from and sending to the acting director to whom the letter is addressed) could be the basis for the meeting or call.”

The letter referred to the section of the White House Office of Management and Budget that coordinates regulations throughout the government.

Senate Democrats last week unsuccessfully urged their colleagues to delay a vote on Mr. Pruitt’s confirmation until the emails were released.

The emails do not appear to include any request for his intervention explicitly in exchange for campaign contributions, although Mr. Pruitt was separately working as a member of the Republican Attorneys General Association to raise money from many of the same companies.

Despite the large volume of correspondence between Mr. Pruitt’s office and the industry players, the emails are unlikely to cause Mr. Pruitt significant new problems. They do expand on email exchanges or topics that previously had been disclosed.

The Oklahoma Attorney General’s office has withheld some documents, asking the judge to determine if they can be exempted from the order requiring their release. There are also other pending open-records requests, from the Center for Media and Democracy, The Times and other news organizations.

#### **Mother Jones**

<http://www.motherjones.com/environment/2017/02/donald-trump-scott-pruitt-epa-employee-resist>

#### **“We Will Never Stop”: An EPA Employee Blasts the Trump Administration**

By Eric Holthaus 2/22/17, 11:00AM

As we embark on month two of Donald Trump's presidency, it's hard to imagine a group of federal employees facing more uncertainty than the staff of the Environmental Protection Agency. Industry ally and new EPA Administrator Scott Pruitt can be viewed only as an agent of profound change, and he's already faced intense opposition from Senate Democrats and from the staff he inherits.

In recent days, both *Bloomberg* and the *Washington Post* have reported that the first moves Trump and Pruitt will make in their overhaul of US environmental policy will be to roll back parts of Barack Obama's climate legacy and the "Waters of the US" rule—a thorn in the side of farmers and ranchers. This comes as no surprise—both of these policies were identified at the top of the administration's "America First Energy Plan" agenda the moment the White House website switched over on inauguration day.

After his hostile nomination process, Pruitt made an appeal to civility Tuesday in his first address to EPA staff. "We as an agency and we as a nation can be both pro-energy and jobs and pro-environment," he said. "We don't have to choose between the two." That message may ring a bit hollow to the agency's staff, however—coming from a person who has dedicated his career to dismantling environmental safeguards. We appear to be entering an era in which environmental protection will officially be seen as an impediment to the will of industry. For EPA staffers who have devoted their lives and careers to preserving the planet, this is a heartbreaking development.

Shortly after the inauguration, a career EPA employee contacted me through a secure chat program and began to express profound concern over the threat now posed to their life's work. What follows is a heartfelt essay that this official—who requested anonymity out of fear of retribution by the administration—wrote shortly after Pruitt's confirmation last week:

*I am a proud employee of the EPA. My colleagues and I are passionate about protecting the health of the American people—and the natural environment we share—from harmful pollution, chemicals, and pesticides. Many of us fear that the American people believe politicians when they say our agency is full of "lazy bureaucrats." The reality is we all got into this work because we believe that it is our duty to protect people and the planet we live on for future generations. EPA is a public health agency, and we come to work every day focused on how we can better serve the American people and enable everyone, regardless of income, race, or any other factor, to enjoy equal protection and access to a healthy environment so everyone can prosper and enjoy the opportunities this country has to offer.*

*We are not against industry or economic prosperity; we want to work toward a society that cherishes people, the planet, and the economy—all at the same time.*

*When the EPA was established in 1970, by a Republican administration, the idea of a healthy environment was not a partisan issue. But since then, we have moved into an era where politicians and corporations started working to convince the American public that protecting their water, land, and air from harmful pollution was not in the people's best interests and that our economy can't be prosperous if our environment and public health is protected at the same time; this is a lie. What is true is that polluters don't want to be held accountable for their actions. But when will our leaders see that people matter as well? The attitude that powerful polluters should be able to operate unchecked, no matter how many people are hurt, is the same all over the world.*

*What type of nation are we when we allow our leaders to sign into law a rule that makes it EASIER for mining companies to pollute local waterways? These same politicians will try to convince their voters that making it easier to pollute local streams is somehow good for them. Communities in West Virginia, Indiana, and Alabama with sky-high rates of cancer due to industry pollution shouldn't be presented with the false choice of accepting even more poison in their local environment or having a job. No one should be told that they have to put up with cancer-causing poison in their water, air, and land. It's shameful, and it's wrong.*

*We at EPA believe that everyone should be able to breathe clean air, drink clean water, have healthy food, AND ALSO have a growing economy. Those that want to weaken EPA will say, "Well, the states can do it themselves." EPA has always worked closely with states and respects jurisdictional power, but rivers and air don't stop at state borders, and every American—no matter where they live—deserves to have a basic standard of protection.*

*You have to ask yourself: Who benefits when the EPA is weakened? Who benefits when our staff is laid off, cast aside, and when the agency is prevented from pursuing its mission of protecting public health and the environment? Who benefits when the agency can't consistently enforce environmental laws that are meant to protect the public? The beneficiaries are not the people. Environmental protection is not a partisan issue. Science is not partisan. We all share this earth and its resources on which we all depend to survive. The amount of money you have should not determine if you get to live a healthy life, free from pollution. The politicization of this issue is manipulation by those who are already powerful. We, EPA professionals, have dedicated our lives to this work because we care about people more than we care about money or even being recognized for what we do.*

*2015 was the deadliest year on record for people working to defend and protect the environment. Let that sink in. One hundred and eighty-five human beings were killed around the world (more than three for every week of 2015) because they dedicated their lives to protecting human health from pollution and preserving the beautiful planet we all cherish. The same year, the Environmental Protection Agency welcomed Berta Cáceres, along with the other winners of the Goldman Environmental Prize, to honor them for being global leaders in defense of human rights and environmental protection. Less than one year later, Ms. Cáceres would be murdered in her home in Honduras because she was brave enough to challenge mining and dam-building corporations. She defended human rights and the environment, and her life was taken because of it.*

*Here in the US, those of us who work to protect the environment and human health from corporate pollution are lucky enough that we do not live under the specter of murder. We are, however, acutely aware that the forces behind these heinous crimes against environmental activists abroad are the same forces that are working against us in the US today. And make no mistake: These forces are poised to grow even stronger.*

*If it is discovered in the next few weeks that the EPA Administrator does in fact have even closer ties to polluting corporate interests than we feared, what will the public do? Will the capture of EPA by corporate interests be swept up in all the other horrifying news of the day or week? Or will the public finally decide that it is not acceptable to allow EPA, the only agency with a mission dedicated to protecting the environment, to be systematically dismantled, allowing those at the top to further concentrate wealth and power among themselves? Despite the long odds we face, we will never stop working to protect every person's right to have a healthy place to live, work, and play. And if the new administrator casts me out of the job I love, I will not stop working toward the principles that have always animated my life. This is who I am, and that will never change. I stand in solidarity with brothers and sisters that work to protect human rights, human health, and the environment here in the US and all over the world. The struggle continues.*

## **Bloomberg BNA**

[http://esweb.bna.com/eslw/1245/split\\_display.adp?fedfid=105973923&vname=dennotallissues&wsn=498738000&searchid=29411995&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0](http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=105973923&vname=dennotallissues&wsn=498738000&searchid=29411995&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0)

### **White House Vetting Pruitt Choices for EPA Leadership: Adviser**

By Brian Dabbs 2/22/17

The White House is collaborating with newly minted EPA administrator Scott Pruitt to vet candidates for the agency's leadership team, but the speed of confirmations is largely up to a Senate already dogged by intransigence, a top White House adviser said Feb. 21.

"Those decisions are made by the secretary, and in this case the administrator, and the president, and they make them jointly from what I've seen," Don Benton, a senior White House adviser on the agency, told reporters after Pruitt's inaugural speech to EPA staff.

"The president understands that when he puts an executive in charge of something they need to be able to bring the people in that they need to get the job done," Benton, a Republican state senator from Washington, said.

Pruitt took the reins of the Environmental Protection Agency Feb. 17 following a contentious and drawn-out confirmation process. Acting deputies and assistant administrators currently fill the ranks of the highest levels of the agency, led by Acting Deputy EPA Administrator Mike Flynn. Democrats in the Senate are continuing to stall nominees amid an unprecedented pushback on the newly elected president's Cabinet.

President Donald Trump reportedly rejected Secretary of State Rex Tillerson's pick for deputy, Elliott Abrams, in recent days, but Benton dismissed the prospect of a leadership selection row at the EPA.

### **Processing Names**

"I don't expect we'll have any trouble," he told reporters. "We're ready to go. Scott has in mind the people that he needs to help him, and we've already begun to process some of those names through the White House."

Various news accounts have mentioned Donald van der Vaart, former secretary of North Carolina's Department of Environmental Quality, and Andrew Wheeler, a former aide to Sen. Jim Inhofe (R-Okla.), as potential Pruitt deputies.

A spokesman for the Senate Environment and Public Works Committee, the panel tasked with processing the EPA staff, said he couldn't immediately respond to a Bloomberg BNA request for comment. Lisa Jackson, the first EPA administrator under former President Barack Obama, didn't land a Senate-confirmed deputy administrator, Bob Perciasepe, until December of the president's first year in office.

The Senate confirmed Jackson three days after Obama's inauguration in 2009 while Pruitt has had to wait a month.

Benton lauded the Pruitt speech, saying the new administrator rightly stressed the need to balance environmental safeguards and industry growth. Pruitt focused on cooperative federalism and reining in EPA overreach.

"Process matters, and we should respect that and focus upon that, and try to avoid, not try to avoid but do avoid, abuses that occur sometimes," Pruitt told a crowd of several dozen EPA employees. "I believe we as an agency and we as a nation can be both pro-energy and jobs and pro-environment, that we don't have to choose between the two."

As attorney general for Oklahoma, Pruitt sued the EPA over a range of regulations, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards for power plants and methane limits for the oil and natural gas industry.

## **Politico Pro**

## **Group releases 7,500 pages of Pruitt emails**

By Alex Guillen 2/22/17, 9:52AM

1. The watchdog group Center for Media and Democracy today released more than 7,500 pages of emails from the Oklahoma attorney general's office during Scott Pruitt's tenure. CMD says the batch of emails includes communications showing cooperation between Pruitt's office and American Fuel & Petrochemical Manufacturers on the Renewable Fuel Standard and the ozone standard, as well as further connections with Devon Energy, a relationship that was first reported by The New York Times in 2014.

A state judge last week said Pruitt had wrongly delayed releasing the emails, which were requested by CMD more than two years ago. Mike Hunter, who replaced Pruitt as attorney general on Monday, complied with the order to release the emails to CMD by yesterday. He is also required to turn over by Monday more emails connected to a half-dozen more CMD requests made over the past two years.

### **E&E News**

<http://www.eenews.net/energywire/2017/02/22/stories/1060050390>

## **Emails hang over Pruitt message to EPA staff**

By Joel Kirkland and Mike Lee 2/22/17

Staff from the Oklahoma attorney general's office began turning over thousands of documents related to U.S. EPA Administrator Scott Pruitt's contacts with oil, gas and coal groups during his tenure as the state's top lawyer.

Last night, by court order, the Center for Media and Democracy received a disc with 7,500 pages of emails and public documents that it has been requesting from Pruitt's office for two years.

The liberal-leaning watchdog requested the information two years ago and sued to gain access to the records in part to force a response before the Senate confirmed Pruitt to EPA's top job. Oklahoma District Judge Aletia Haynes Timmons on Thursday ordered the attorney general's office to release the documents. The Republican-led Senate confirmed Pruitt on Friday after Democrats held the Senate floor all night in the hope of bringing public pressure to bear against Pruitt's nomination (*Energywire*, Feb. 17).

Pruitt served as Oklahoma's attorney general from 2011 until this month and developed a reputation as a champion of the fossil fuel industry. *The New York Times* reported in 2014 that Pruitt used language from oil and gas companies in letters and legal briefs challenging the Obama administration's environmental regulations.

Before becoming President Trump's EPA administrator, Pruitt organized efforts by attorneys general and oil, gas and coal companies aiming to stop Obama-era rules. Some of their lawsuits against EPA failed to overturn regulations, but Pruitt and other Republican attorney generals won a Supreme Court stay on President Obama's signature rule for addressing greenhouse gas emissions from existing power plants, the Clean Power Plan.

The pursuit of the records overshadowed Pruitt's first days in office and highlighted his work promoting the energy industry and individual states' prerogatives in enforcing environmental laws. In his first public remarks to the EPA staff, Pruitt suggested those themes would be part of the Trump administration's approach to regulating greenhouse gases, air quality and water quality.

"Regulators exist to give certainty to those they regulate," he said in remarks to EPA's 15,000 employees nationwide. "Those that we regulate ought to know what's expected of them so they can plan and allocate resources to comply."

Without explicitly denouncing Obama's approach to regulating energy companies, Pruitt indicated a broad shift away from Obama's use of the federal agency to force reductions in auto, oil field and power plant emissions.

"Federalism matters," Pruitt said. "I seek to ensure that we engender the trust of those at the state level, that those at the state level see us as partners in this very important mission we have as an agency, and not adversaries."

## **Clean Power Plan**

Pruitt's comments came on the heels of reports that Trump plans to issue an executive order this week to start the process of rescinding the Clean Power Plan. The CPP, which is on hold until federal courts rule on pending litigation, is the agency's signature climate regulation targeting carbon emissions from power plants.

Critics of the rule accused EPA of misinterpreting the Clean Air Act and running roughshod over states that rely on coal for electricity. Its supporters say EPA's finding that carbon dioxide is a pollutant compels the agency to act in the public interest, and they say state-led plans were the centerpiece of the regulation.

To back out of the Clean Power Plan, Pruitt's starting point is at the U.S. Court of Appeals for the District of Columbia Circuit, where litigation is pending. He could request the court pause before ruling on legal challenges against the carbon rule, according to analysts, alerting the court of EPA's intentions to rewrite the regulation.

Anything he does is expected to trigger a reaction from states that support the rule.

In late December, 14 attorneys general, including from New York, California, Virginia, Oregon and Illinois, signed a letter to then-President-elect Trump urging him to continue defending the Clean Power Plan.

"The Clean Power Plan builds on successful strategies that states, local governments and the power sector have used to cost effectively cut greenhouse gas emissions from power plants, while at the same time creating jobs and growing our economies," the letter stated.

But the letter also responded to a push by states primarily in the South and Midwest to get Trump to unravel the Clean Power Plan.

"If the challengers are so confident in their oft-repeated claim that the Clean Power Plan is 'unlawful,' why not let the court decide the claims that they themselves brought?" said the attorneys general, led by New York Attorney General Eric Schneiderman (D).

A spokesman for the Sierra Club said to expect a "proportionate response" to an executive order directing EPA to dismantle the carbon regulation — from environmental groups, public health advocates and states in the Northeast and West supporting the federal effort to combat climate change.

## **E&E News**

<http://www.eenews.net/climatewire/2017/02/22/stories/1060050392>

### **Staff wary but ready to work with Pruitt amid new email dump**

By Emily Holden, Niina Heikkinen and Hannah Hess

Newly appointed U.S. EPA Administrator Scott Pruitt yesterday tried to extend an olive branch to worried staffers hours before consenting to a judge's order and releasing more than 7,000 pages of emails with energy firms.

By late yesterday evening, advocates with the Wisconsin-based Center for Media and Democracy were combing through the email correspondence between Pruitt and his top staff in the Oklahoma attorney general's office and coal, oil and natural gas companies. The group intends to publish the emails online by 9:30 am today.

In an emailed statement, a spokesman for the Oklahoma attorney general's office said the office had gone "above and beyond" the requirements of Oklahoma's open records law.



"This broad disclosure should provide affirmation that, despite politically motivated allegations, the Office of Attorney General remains fully committed to the letter and spirit of the Open Records Act," spokesman Lincoln Ferguson said.

The Center for Media and Democracy had pursued the documents for two years. Last week, Oklahoma County District Judge Aletia Haynes Timmons ruled that Pruitt had failed to follow the state's open records laws, and required him to produce emails relating to one of the outstanding requests by close of business yesterday.

Senate Democrats and environmental groups had demanded the emails' release prior to Pruitt's confirmation last week but failed to convince Republicans. Yet any hint of an email scandal was absent from Pruitt's first public address yesterday to employees at EPA headquarters in Washington, D.C.

Holding up an EPA cap, Pruitt told employees he wants to help them do their work and argued for "civility" in a "toxic" political environment.

"I seek to be a good listener," Pruitt said, commending career staffers for their dedication and contending that media reports about him might not paint a fair picture.

But Pruitt's tone pivoted sharply from EPA's core message in recent years. Where former EPA chief Gina McCarthy focused most of her speeches on the agency's work to improve public health, Pruitt instead highlighted the importance of abiding by congressional intent and providing regulatory certainty to businesses.

"Regulations ought to make things regular," Pruitt said. "Regulators exist to give certainty to those that they regulate. Those that we regulate ought to know what's expected of them so they can plan and allocate resources to comply."

Pruitt said EPA should avoid "abuses that occur sometimes" in the regulatory process. He called out the agency practices of regulating through guidance rather than an official rulemaking, or writing rules in response to litigation from environmental groups.

"We need to be open and transparent and objective in how we do rulemaking and make sure we follow the letter of the law as we do so," he said.

### **Employees taking a wait-and-see approach**

Pruitt plans to work to roll back many of the Obama administration's signature environmental achievements, including a rule to reduce greenhouse gas emissions from power plants. An executive order on that rule, called the Clean Power Plan, could come as early as this week, although more binding efforts to undo it will take longer and face lawsuits (*Climatewire*, Feb. 21).

The new administrator wants to narrow the scope of EPA's work, and employees have voiced concerns about staffing and budget cuts and reorganizations that might prevent them from fulfilling their obligation to protect the environment.

EPA staffers filing out of their Washington headquarters yesterday said they were still concerned but would wait to see how their new boss worked.

One EPA employee said he would "give him a chance."

"I don't like to prejudge anybody," he said.

That employee added that he thought Pruitt's speech was "kind of vanilla." He said that while it makes sense that Pruitt would emphasize a need to adhere to the law, he added, "Let's hope we stick to that."

Another employee said he saw the potential for a positive working relationship with the new administrator.

"He thinks that you can still save the environment yet have economic growth, which sounds good. I think he's a personable guy; I kind of like him. I look forward to working with him," said one EPA employee in the Office of Water.

Jeff Holmstead, a former assistant administrator at EPA under George W. Bush, said Pruitt "certainly understands he's coming in with some controversy."

"I think this is the first step of his effort to reach out and make sure people understand who he is and know he's open to addressing their concerns," Holmstead said, adding Pruitt "didn't pull any punches" or make promises that he couldn't keep about EPA's budget, which the president and Congress will ultimately decide. Many agency staffers will be waiting to see the budget, Holmstead said.

### **Greens blast speech**

Bill Becker, executive director of the National Association of Clean Air Agencies, said Pruitt's case for ensuring that the agency abides by the law, adheres to process and works closely with states "sounds awfully similar to previous administrations &mdash and I say that really as a compliment."

But a national environmental program for cutting pollution won't succeed at the state and local level without a strong and effective EPA, he warned. The possibility of significant cuts to EPA's budget or slashing the agency's 15,000-person staff to about 5,000 employees, as transition team chief Myron Ebell has suggested, threatens that (*Greenwire*, Jan. 26).

If Pruitt's first acts are to rescind regulatory programs on which many states relied without seeking a substitute, Becker said, it might cause a rocky start.

"We welcome delegation of authority, but not without financial and regulatory help, and not without the important backstop of EPA," Becker said.

Becker concluded, "These are laudable principles. No one can argue about any of those principles. No one should argue about any of those principles. But it's how they are carried out that matters."

Environmentalists quickly condemned Pruitt for not focusing his speech more on environmental and public health issues.

"My immediate reaction was that in his first address to EPA, he didn't talk about environmental protection at all. It was completely absent of any mention of protecting clean water, air and land. No mention of climate change, which is obviously a critical challenge of our time," said Nick Conger, press secretary for the Natural Resources Defense Fund and former communications adviser to the EPA administrator's office during the Obama administration.

Conger noted that Pruitt also did not focus on regional engagement and did not take questions from staff members, something his former boss, McCarthy, used to do during each of her all-hands meetings as EPA administrator.

"I'm just very struck that it seems his focus is on protecting industry and economic impacts, market impacts, at the exclusion, almost, if not entirely at the exclusion, of public health protection. That's what EPA is there to do, protect public health," he said.

### **'Hell to pay' if climate regs repealed?**

Catherine McCabe, who was acting administrator until Pruitt's confirmation, touted her new boss's work to achieve a water rights settlement among the state of Oklahoma, cities and tribal nations.

Pruitt instead spoke about his vision for making regulations simpler for industry.

While he didn't mention the Clean Power Plan directly, he said he believes the agency can be "both pro-energy and jobs and pro-environment."

"We don't have to choose between the two," he said.

Industry groups challenging EPA's regulation of carbon dioxide under the Clean Air Act seem wary of going too far in contesting climate rules.

A senior official at the U.S. Chamber of Commerce's Institute for 21st Century Energy recently said there would be "hell to pay" if the Trump administration tries to repeal EPA's 2009 endangerment finding.

"And if you are going to go out there and say, 'We're going to pull this back,' I mean there is going to be hell to pay, not just from those people out there who are protesting those plants," Senior Vice President for Policy Christopher Guith said last month at an event in Kentucky, according to a [transcript](#) published by the Energy and Policy Institute, a watchdog organization backing renewables.

"There's going to be hell to pay from, you know, soccer moms and soccer dads all throughout the country. People who probably voted for Donald Trump," Guith said.

Matt Letourneau, a spokesman for the institute, said Guith's answer "was based on a political analysis of the situation," not an official policy position.

#### **E&E News**

<http://www.eenews.net/climatewire/2017/02/22/stories/1060050394>

#### **Automakers ask Pruitt to revisit Obama's emissions rules**

By Camille von Kaenel 2/22/17

Automakers have asked new U.S. EPA Administrator Scott Pruitt to reverse an Obama-era decision to lock in vehicle emissions standards through 2025.

The Alliance of Automobile Manufacturers wants EPA to reopen an official review of fuel economy rules, which it says were rushed during the final days of the Obama administration to cement the former president's climate legacy.

EPA had until April 2018 to decide whether to tighten, loosen or simply maintain the emissions standards. Instead, it finalized its decision on Jan. 13 — days before President Trump's inauguration.

The auto industry group's president and CEO, Mitch Bainwol, asked Pruitt to withdraw that decision yesterday in a letter, calling it "the product of egregious procedural and substantive defects" and "riddled with indefensible assumptions, inadequate analysis and a failure to engage with contrary evidence."

EPA's decision to keep the standards unchanged followed a technical report in the summer that found that automakers could continue to meet and exceed the standards with available or impending technologies, though Americans' changing preferences for bigger vehicles would slightly mitigate the overall greenhouse gas benefits of the program.

Bainwol wrote that he is not asking for a different final decision "at this time" but wants more time for the agency to consider additional studies the trade lobby is conducting on the feasibility of the standards. The decision was not published in the *Federal Register* because it was not a new rule and so is not subject to a regulatory freeze.

Automakers agreed to the standards in 2012 on the condition of the midterm review. The emissions standards would bring average fleetwide fuel economy to 50.8 mpg in 2025. The letter by the trade lobby follows a similar request by automaker CEOs directly to President Trump to soften, if not eliminate, the rules.

Bainwol also said he is concerned about discrepancies between the agencies that set the rules: EPA and the National Highway Traffic Safety Administration. NHTSA, which must issue a separate rule for the 2022-25 standards, has not yet completed its midterm review. Before Trump took office, it agreed to consider long-standing requests by automakers to tweak the standards.

Environmental and national security advocates have warned that any change to the fuel economy standards would have to surmount legal challenges and could create greater uncertainty for automakers.

### **The Hill**

<http://thehill.com/policy/energy-environment/320590-group-releases-emails-from-new-epa-chief>

#### **Group releases emails from new EPA chief**

By Devin Henry 2/22/17 9:36 AM EST

An open-government group has released a batch of emails from Environmental Protection Agency Administrator Scott Pruitt's tenure as Oklahoma attorney general.

The Center for Media and Democracy (CMD) released nearly 1,500 pages of emails on Wednesday morning, one day after Pruitt's former office turned them over to a state court in Oklahoma. The group said it received 7,564 pages of emails from Pruitt's office overall.

The court had ordered Pruitt's office to release the documents last week after CMD sued, seeking a response to an Open Records Act data request it had sent years earlier.

That court order came days before the Senate voted to confirm Pruitt to his post at the EPA.

Senate Democrats — all but two of whom voted against Pruitt's nomination — insisted the vote be delayed until after the emails were released. Pruitt said the emails could show close ties between his office and the Oklahoma fossil fuel industry, a sector that he defended during his tenure as the state's attorney general.

Pruitt was sworn in as EPA administrator on Friday and he addressed the agency for the first time on Tuesday.

### **AP**

[http://hosted.ap.org/dynamic/stories/U/US\\_OPEN\\_RECORDS\\_LAWSUIT\\_PRUITT?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT](http://hosted.ap.org/dynamic/stories/U/US_OPEN_RECORDS_LAWSUIT_PRUITT?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT)

#### **EPA head's emails with energy companies to be released**

By Tim Talley 2/21/17

OKLAHOMA CITY (AP) -- The Oklahoma attorney general's office said Tuesday it is complying with a judge's order to surrender documents related to new Environmental Protection Agency leader Scott Pruitt's communications with energy companies while he served as the state's attorney general.

The office had until 5 p.m. Tuesday to comply with District Judge Aletia Haynes Timmons's order to turn over emails and other documents to the Wisconsin-based Center for Media and Democracy, which requested the documents more than two years ago under Oklahoma's Open Records Act.

A spokesman for the office, Lincoln Ferguson, said it turned over records related to the January 2015 request to the watchdog agency and that other records were turned over to the judge to determine if they are privileged and not subject to release under the law.

"The office went above and beyond what is required under the Open Records Act and produced thousands of additional documents that, but for the court's order, would typically be considered records outside the scope of the act," Ferguson said in an emailed statement.

"This broad disclosure should provide affirmation that, despite politically motivated allegations, the office of attorney general remains fully committed to the letter and spirit of the Open Records Act," Ferguson said.

An attorney for the advocacy group, Bob Nelon, said he received an email from the attorney general's office at 4:14 p.m. Tuesday indicating that it planned to comply with the judge's order and make the documents available.

Nelon said the records were provided electronically and that an initial review indicated one computer disk contained 7,564 pages, although it was not immediately clear how many documents they represent.

The attorney general's office had previously identified more than 3,000 emails that it said pertained to the group's January 2015 request.

Nelon said the records will be transmitted to the Center for Media and Democracy, which plans to make them publicly available on its website.

Timmons has also ordered the attorney general to comply with other open-records requests by the group in 2015 and 2016.

The judge handed down her ruling on Thursday in connection with a lawsuit the group filed that accused the attorney general's office of failing to provide "prompt and reasonable access" to the documents, as required by the Open Records Act.

Pruitt resigned his post as Oklahoma attorney general on Friday, the day he was sworn in as President Donald Trump's EPA administrator.

Among other things, the January 2015 request sought information about Pruitt's communications, private meetings and relationships with fossil fuel companies as the state's attorney general, companies he will help regulate as EPA administrator.

Nelon said later requests were more narrowly tailored and that the advocacy group has no idea how many documents are involved.

As Oklahoma's attorney general, Pruitt repeatedly sued the EPA and criticized what he has characterized as the EPA's "activist agenda." He has been a reliable booster of the fossil fuel industry and has said his support for legal positions advocated by oil and gas companies was in the best interest of Oklahoma, which is economically dependent on the fossil fuel industry.

In his first meeting with the EPA's staff Tuesday, Pruitt said he believes the nation can be "pro-energy and jobs, and pro-environment."

"I think our nation has done better than any nation in the world at making sure that we do the job of protecting our natural resources, and protecting our environment, while also respecting economic growth," Pruitt said.

#### **Inside Climate News**

<https://insideclimatenews.org/news/21022017/pruitt-enters-epa-conciliatory-words-staff-braces-divisive-action>

#### **Pruitt Enters EPA with Conciliatory Words, but Staff Braces for Steep Cuts**

By Marianne Lavelle 2/21/17

Scott Pruitt, who spent the past six years as the Environmental Protection Agency's courtroom antagonist, took the helm of the agency Tuesday with a pledge to listen to agency staff and tackle tough problems cooperatively.

"We ought to be able to get together and wrestle through some difficult issues in a civil manner," said Pruitt in an address to EPA employees, who are bracing for deep budget cuts and a retreat from the goal of addressing climate change.

Pruitt didn't talk about policy specifics. Instead, he laid out a vision for an EPA that could avoid litigation in the future by limiting the agency's ambitions under the mandates that Congress gave it and sticking to "process."

But environmental advocates already were preparing a vigorous legal defense of regulations they fear could be undone. They maintain the rules were subject to a rigorous public comment and debate, as well as court review.

With the Trump White House expected as soon as this week to issue executive orders to roll back the Clean Power Plan, President Obama's signature climate initiative, and other EPA regulations, David Doniger, climate programs director of the Natural Resources Defense Council, responded on Twitter:

Pruitt's address to the agency came on the first full federal workday since his contentious confirmation process ended Friday with a largely partisan 52-46 vote of approval.

"This environment that we live in today is a very toxic environment," Pruitt said. "We have jerseys that we put on, and that is something that I think is damaging to the overall objective of finding the results and answers."

But Pruitt, the former Oklahoma attorney general, is likely to continue to be dogged by the same issues that have been raised since his nomination by Trump in December. On the same day as his official welcome at EPA, about 2,000 of his emails with fossil fuel companies and organizations were to be released in Oklahoma after years of delay.

Pruitt suggested that EPA staff may have gotten an incomplete picture of him from reading news reports. "I look forward to sharing the rest of the story with you," he said. "I seek to listen, learn and lead with you, to address these issues that we face as a nation."

While stressing civility and cooperation, Pruitt returned to the arguments he made against the EPA both in court and before the Senate.

"Process matters," said Pruitt. "Regulations are to make things regular, to give certainty to those who are regulated, so they know what's expected of them and can allocate resources so that they can comply."

"The process we engage in is very important. It sends a message that we take seriously our role of taking comment and offering a response, and in making informed decisions on how it's going to impact those in the marketplace to achieve the ends we have in statute," he said. "We should avoid abuses...like engaging in regulation through litigation, consent decrees that bypass the Administrative Procedure Act."

Pruitt's view echoes the complaints of industry lobbyists who have decried EPA's settlement of a number of lawsuits brought by environmental groups during the Obama administration. Under these agreements, the EPA finalized regulations to control mercury from power plants, address air quality issues due to ozone, clean up the Chesapeake Bay and regulate greenhouse gases.

Critics say the consent agreements are a kind of collusion between the EPA and environmentalists. Environmental groups, however, argue that their litigation followed years of effort and wrangling with the agency. (The Government Accountability Office [found little impact](#) on EPA policy due to the deadlines imposed by consent decree.) In 2014, the U.S. Supreme Court rejected an effort by Pruitt and other litigants to overturn a settlement with several states and environmental groups under which the EPA agreed to regulate greenhouse gases.

"EPA already has SO MUCH PROCESS," Jack Lienke of the Institute for Policy Integrity at the New York University School of Law, [said on Twitter](#). "Clean Power Plan was in the works for > FOUR YEARS before finalization."

In his remarks on Tuesday, Pruitt also reprised the argument he often made in more than 14 lawsuits against the EPA—that it had overreached its legal authority. "The rule of law: the only authority any agency has is given to it by Congress," Pruitt said. "Sometimes that authority is broadly stated, and other times Congress is very restrictive, and it's been very specific about what they agency can and can't do.

"We need to respect that. When we do that, here's what happens: We avoid litigation, and we reach better outcomes."

But the Supreme Court, in its landmark Massachusetts v. EPA decision, ruled that, "Because greenhouse gases fit well within the Act's capacious definition of 'air pollutant,' EPA has statutory authority to regulate emission of such gases."

The court said that "EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. It has refused to do so, offering instead a laundry list of reasons not to regulate."

And courts have rejected Pruitt's argument that EPA exceeded its authority in other cases, such as the Obama administration's cross-border pollution and mercury pollution regulations for power plants.

Other legal challenges, however, have yet to be decided, including a case now pending in a federal appeals court on the Clean Power Plan. The Supreme Court has issued a stay on putting the rule into effect.

Pruitt did not mention climate change, but said, "We as a nation can be pro-energy and jobs and pro-environment."

Environmental advocates quickly took issue with the picture of the agency painted by Pruitt. Lienke tweeted that statistics show EPA has been balancing economic growth and environmental protection all along. He cited a 68 percent reduction in the most common air pollutants from 1970 and 2013, as GDP tripled and the U.S. population grew by 54 percent.

Although all EPA staff were invited to attend, there was only room for about 100 in the high-ceilinged ceremonial room next to the administrator's office, the Rachel L. Carson Great Hall; the agency's 15,000 employees could watch remotely. The crowd in the room included some of the agency's first political appointees, including the transition leader, former Washington State Sen. Don Benton.

Benton said after the speech he thought that Pruitt had struck "a perfect balance" in his speech. "He's very much in partnership mode," he said.

Brett Hartl, government affairs director of the Center for Biological Diversity, said he thought that although Pruitt's comments about the rule of law and process "sound good," his record indicates he will be taking the agency in a dramatically different direction. "His agenda is straightforward. He wants to undercut the agency," said Hartl. "He's going to be the guy who cuts their staff and their budget, and makes employees do useless things so they can't do enforcement."

#### **Mother Jones**

<http://www.motherjones.com/environment/2017/02/pruitt-speech-epa>

#### **"Condescending and Hypocritical": An EPA Staffer Blasts Scott Pruitt's First Speech**

By Rebecca Leber 2/22/17, 4:43PM

Scott Pruitt may have wanted to ease Environmental Protection Agency staffers' concerns about him Tuesday, but his first remarks as head of the agency hardly mentioned environmental protection at all.

With Donald Trump's EPA transition staff sitting nearby, Pruitt delivered an 11-minute speech, in which he declared, "We as an agency and we as a nation can be both pro-energy and jobs and pro-environment." He also quoted famed conservationist John Muir: "Everyone needs beauty as well as bread, places to pray in and play in." Pruitt did lament the

"toxic environment" in the country, but it was a reference to the political climate—part of a call for a more civil discourse.

The former Oklahoma attorney general never dwelled on the specifics of his or the White House's agenda for the EPA in the short address, which featured introductory remarks by recent acting administrator Catherine McCabe. Neither McCabe nor Pruitt mentioned the elephant in the room: the EPA's regulations on climate change and Pruitt's role in suing the agency for its climate work.

"I know it's very difficult to capture in one speech the vision and direction of an agency," Pruitt said, while outlining a few of his core guiding principles for the new EPA. He said he wants to limit the scope of the agency's regulatory work and ensure stability for industry. "Regulations ought to make things regular," Pruitt said. "Regulators exist to give certainty to those they regulate...Process matters and we should respect that and focus on that, and try to avoid, do avoid, abuses that occur sometimes."

Pruitt mentioned the need to follow "rule of law" and respect states' roles in enforcing environmental standards. "Congress has provided a very robust, important role of the states," Pruitt said. (Environmentalists, of course, are quick to point out that states are not always eager or financially equipped to protect air, water, or the climate on their own.)

If Pruitt's address was meant to soothe staffers' concerns about their incoming administrator, they may have come up short.

"Pruitt's talk [was] as bad as expected," said a current career EPA staffer of over 20 years, who requested anonymity, following the speech. "Not one word about public health. And talking about the rule of law as if we didn't do EVERYTHING with the realization that it WILL end up in court. It was condescending and hypocritical."

Some former EPA officials shared that view. "Trump's team spent the entire campaign and the last few months railing against EPA's existence, its staff, and its purpose," Liz Purchia, an Obama-era communications staffer at the agency, said in an email. "Accomplishing agency priorities was no easy task when the administrator had staff's back and political and careers agreed the majority of the time, so let's see how well Trump's EPA does getting staff to follow them when they feel disrespected. These are professionals with years of experience, who have been made to feel like their leader doesn't trust their judgment. The American people are relying on them to defend the agency, protect its environmental statutes and stand up to Trump's team to ensure they uphold science and the law."

Going by the EPA's press releases over the weekend, the agency now views industry and conservatives as its real constituency. No public health groups, environmentalists, or scientists appeared on the laundry list of "stakeholder" congratulations circulated by the EPA after Pruitt was sworn in.

Outside the EPA on Tuesday, an administration official echoed Pruitt's pledge that he will listen to career staff. "He's a very good listener," Don Benton, a White House senior adviser, told reporters after the address. "I don't expect him to be making any quick decisions."

Benton didn't answer specifics on the timing of the presidential actions, saying that the matter is between Pruitt and Trump. But a slow transition based on input from current EPA staff isn't what news reports—nor Pruitt's own words—have suggested. Various news outlets have reported that the White House intends to roll out a series of presidential actions targeting the EPA as early as this week.

Pruitt didn't provide much clarity Tuesday on what comes first. But in an interview with a conservative *Wall Street Journal* columnist last week, Pruitt appeared to reverse himself on one key issue. At his confirmation hearing in January, he said that the EPA's official finding that climate change poses a health danger and is therefore subject to the Clean Air Act "needs to be enforced and respected." But according to the *Journal*, Pruitt now wants to conduct a "very careful review" of whether the agency can do anything at all about global warming. His remarks Tuesday appear to have done little to persuade his critics that such a review would be based on sound science.



## **Morning Consult**

<https://morningconsult.com/2017/02/21/no-mention-climate-pruitts-address-epa-employees/>

### **No Mention of Climate in Pruitt's Address to EPA Employees**

By Jack Fitzpatrick 2/21/17

Environmental Protection Agency Administrator Scott Pruitt did not mention climate change or specific regulations in his first address to employees on Tuesday, instead emphasizing the agency's limitations and the need to provide more certainty for the energy industry.

Pruitt also did not mention air pollution or water pollution, key portions of the agency's mission, during the 11-minute address, and did not take questions. The speech could signal how Pruitt is focused more on avoiding government overreach rather than propagating new regulations.

"Regulators exist to give certainty to those that they regulate," he said, adding that he wants the agency to "avoid abuses that occur sometimes." That includes "using the guidance process to do rulemaking."

Pruitt may have been referring to a controversial guidance from the White House Council on Environmental Quality, which asks agencies conducting environmental reviews to consider how any infrastructure project would affect climate change. The guidance was technically voluntary, but critics said it was practically mandatory even though it didn't go through the full rulemaking process.

Pruitt's process-oriented speech differed in tone from the approach of his predecessor, Gina McCarthy, who emphasized the need for strong protections from pollution.

While serving as Oklahoma attorney general, Pruitt was involved in 13 lawsuits against the EPA, including high-profile cases over regulations on greenhouse gases and mercury pollution. He also took criticism from Democrats during his confirmation hearing for his close ties to the fossil fuel industry.

League of Conservation Voters Senior Vice President Tiernan Sittenfeld said in an emailed statement that Pruitt's speech "did nothing to address our grave concerns about him."

Pruitt said he hopes to avoid "regulation through litigation," referring to issuing contentious rules that attract lawsuits and ultimately leave a judge to decide details of what the agency can do, rather than agreeing on details with stakeholders.

Every regulation "needs to be tethered to statute," Pruitt said, adding that he believes Congress has been "very prescriptive" in its laws for the agency.

"The only authority that any agency has in the executive branch is the authority given to it by Congress," he said.

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